

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
ADJUDICATIVE SERVICE UNIT**

In Re:

CERTIFICATE OF NEED # 1580 ISSUED TO  
US HEALTHVEST, LLC,

PROVIDENCE HEALTH & SERVICES-  
WASHINGTON d/b/a PROVIDENCE ST.  
PETER HOSPITAL,

Petitioner.

Master Case No. M2016-876

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND INITIAL ORDER

**APPEARANCES:**

Petitioner: Providence Health & Services-Washington d/b/a Providence St. Peter Hospital (Providence), by Perkins Coie LLP, per Brian W. Grimm and Lauren W. Staniar, Attorneys at Law and Stephen I. Pentz PLLC, per Stephen I. Pentz, Attorney at Law

Intervenors: US HealthVest, LLC and Vest Thurston, LLC (HealthVest), by Lane Powell PC, per Barbara Duffy and Jonathon Bashford, Attorneys at Law

Department of Health Certificate of Need Program (Program), by Office of the Attorney General, per Jack Bucknell, Assistant Attorney General

**PRESIDING OFFICER:** Matthew R. Herington, Health Law Judge

The Presiding Officer conducted a hearing on December 5, 6, and 7, 2016, regarding HealthVest's application for a Certificate of Need (CN) to establish a new 75-bed psychiatric hospital in Thurston County, Washington. CN GRANTED with conditions.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND INITIAL ORDER

## ISSUES

Does HealthVest's application to establish a psychiatric hospital in Thurston County meet all of the required Certificate of Need criteria in WAC 246-310-210, 24-310-220, 246-310-230 and 246-310-240?

## PROCEDURAL HISTORY

On December 8, 2015, HealthVest<sup>1</sup> submitted a letter of intent to establish a 75-bed psychiatric hospital in Thurston County, Washington. On January 14, 2016, US HealthVest LLC (HealthVest) formally applied for a certificate of need (CN) from the Program to establish a 75-bed psychiatric hospital in Thurston County, Washington.<sup>2</sup>

On July 5, 2016, the Program issued a letter to HealthVest indicating that it was prepared to issue a CN to HealthVest pursuant to certain conditions. Once HealthVest accepted the conditions, the Program awarded the CN to HealthVest on July 13, 2016.

On July 25, 2016, Providence timely filed a petition for adjudicative proceeding. On August 2, 2016, US HealthVest, LLC, and Vest Thurston, LLC, filed a Motion to Intervene. Intervention was granted on August 24, 2016.<sup>3</sup>

On September 15, 2016, the Program filed a Motion for Summary Judgment. On November 4, 2016, the undersigned Presiding Officer granted partial summary

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<sup>1</sup> At the time the letter of intent was filed, the letter was filed under the name of "Newco, LLC," a wholly owned subsidiary of US HealthVest, LLC. "Newco, LLC" eventually became Vest Thurston, LLC.

<sup>2</sup> The application was submitted by Vest Thurston, LLC, a wholly owned subsidiary of US HealthVest, LLC. Both organizations are intervenors in the present case and are referred collectively as "HealthVest" throughout this Order.

<sup>3</sup> Intervention was granted to US HealthVest, LLC, and Vest Thurston, LLC. US HealthVest, LLC, is the parent company of Vest Thurston, LLC. Vest Thurston, LLC, actually submitted the application.

judgment. Specifically, the undersigned Presiding Officer found that: HealthVest met the need criteria outlined in WAC 246-310-210(1); the Program properly conducted a second screening of HealthVest's application pursuant to WAC 246-310-090(2)(a); the Program properly allowed HealthVest's rebuttal to public comments pursuant to WAC 246-310-160(1)(a); the Program was not required to consider HealthVest's rebuttal comments to be an amended application pursuant to WAC 246-310-100(1); the Program was not required to remove HealthVest's rebuttal comments from the application record; and that the Program properly relied on information in HealthVest's rebuttal comments. See Prehearing Order No. 4.

Subsequently, Providence requested reconsideration of Prehearing Order No. 4 due to the fact that the Program had provided a new need projection in discovery. Consequently, the motion for reconsideration was granted to the extent that Prehearing Order No. 4 found that HealthVest met the need criteria outlined in WAC 246-310-210(1). The remainder of Prehearing Order No. 4 remained intact. See Prehearing Order No. 7.

The adjudicative hearing was held December 5-7, 2016. Pursuant to RCW 34.05.461(7), and by agreement of the parties, closing arguments were filed by briefs.

### **SUMMARY OF PROCEEDINGS**

At the hearing, HealthVest presented the testimony of Richard Kresch, President and CEO, HealthVest, LLC; Jody Carona, Principal and Owner, Health Facilities Planning & Development; Richard Ordos, Supervisor, Disease Control and Health

Statistics, Washington State Department of Health; and Lisa Klein, Associate Principal and Land Use Planner, AHBL.

Providence presented the testimony of Carl Halsan, Principal, Halsan Frey LLC; and Frank Fox, Ph.D., Principal, Health Trends.

The Program presented the testimony of Janis Sigman, Director, Certificate of Need Program, Washington State Department of Health.

The following exhibits were admitted as numbered:

Certificate of Need Program

Exhibit D-1: Application Record; and

Exhibit D-2: Supplement to Application Record (901-937).

Providence Health & Services

Exhibit P-1: Application Record;

Exhibit P-2: City of Lacey Woodland District Strategic Plan (July 25, 2013);

Exhibit P-3: City of Lacey ordinance 1487;

Exhibit P-4: City of Lacey Municipal Code, Chapter 16, Title 24;

Exhibit P-5: Department of Health's Evaluation, dated January 14, 2014, of the Certificate of Need Application, Submitted by US HealthVest Proposing to Establish a 75-Bed Psychiatric Hospital in Snohomish County & Certificate of Need #1518;

Exhibit P-6: Department of Health's Evaluation, dated September 2, 2015, of the Certificate of Need Application Submitted by US HealthVest Proposing to Add 50 Psychiatric Beds to the January 21, 2014, Certificate of Need Approval Psychiatric Hospital in Marysville & Certificate of Need #1532, dated September 11, 2014;

- Exhibit P-7: Settlement Agreement Relating to HealthVest CN #1518 and #1532, dated February 23, 2015;
- Exhibit P-8: Certificate of Need #1518E, dated October 21, 2015;
- Exhibit P-10: Revised need calculation produced by the Program on November 3, 2016; and
- Exhibit P-11: US HealthVest Consolidated Audited Financial Statements and Supplemental Information for the Years ended December 31, 2015, and 2014.

### HealthVest

- Exhibit HV-1: Padilla-Frausto DI, et al., *Three out of Four Children with Mental Health Needs in California Do Not Receive Treatment Despite Having Health Insurance*, Los Angeles, CA: UCLA Center for Health Policy Research, 2014, cited at AR 26;
- Exhibit HV-2: National Council for Behavioral Health, *Meeting the Behavioral Health Needs of Veterans, Operation Enduring Freedom and Operation Iraqi Freedom, November 2012*, cited at AR 27;
- Exhibit HV-3: Joseph C Blader, PhD, *Acute Inpatient Care for Psychiatric Disorder in the United States, 1996 Through 2007*, Archives of General Psychiatry 2011; 68(12): 1276-1283, cited at AR 30;
- Exhibit HV-4: Joseph P. Morressey, et al., *Geographic Disparities in Washington State's Mental Health Workforce, August 2007*, cited at AR 42;
- Exhibit HV-6: Notice for Supporters, South Sound Behavioral Hospital, May 3, 2016; and
- Exhibit HV-7: US HealthVest South Sound Behavioral Hospital, Power Point presentation, May 3, 2016.

The parties were also allowed to use demonstrative exhibits at hearing, which were not admitted into evidence.

During the hearing, the undersigned Presiding Officer accepted Providence's designation of the deposition testimony of Robert Russell, retired Department of Health CN Program Analyst. HealthVest and the Program were provided the opportunity to provide objections and cross-designations by December 14, 2016; Providence was provided the opportunity to provide objections and reply designations by December 21, 2016. HealthVest subsequently provided cross designations and Providence provided reply designations. The Presiding Officer hereby ADMITS all of the deposition testimony of Robert Russell provided by the parties.

The parties submitted briefs in lieu of closing arguments as authorized under RCW 34.05.461(7). The initial closing briefs were due on January 6, 2017, and the responsive closing briefs were due on January 17, 2017. The hearing record was therefore closed on **January 17, 2017**.

## **CITATIONS**

References to the application record are designated "AR" and references to the hearing transcript are designated "TR" in this Order.

## **I. FINDINGS OF FACT**

1.1 A CN applicant who applies to operate or build a psychiatric hospital must demonstrate that its application meets the criteria in WAC 246-310. An applicant for a proposed project must show that: (1) the proposed project is needed; (2) the proposed project will foster containment of the costs of health care; (3) is financially feasible; and (4) will meet the criteria for structure and process of care. WAC 246-310-200(1). The applicant must establish that its application meets all of the above CN criteria.

See WAC 246-10-606.

1.2 An applicant “shall submit a certificate of need application in such form and manner and containing such information as the department has prescribed and published.” WAC 246-310-090(1)(a). Because the Program has not created a specific form for psychiatric hospital applications, applicants for psychiatric hospitals use the form created for acute care hospital applications.

1.3 HealthVest was founded in 2013, and Richard Kresch, M.D., is the current Chief Executive Officer. HealthVest is led by the former management team of Ascend, a healthcare corporation created in 2005. In June 2012, at which time Ascend was acquired by another company, Ascend operated nine hospitals; five of those hospitals were newly opened by Ascend.<sup>4</sup> However, the core management team at HealthVest has worked together since the 1990s. Therefore, HealthVest’s management team has significant experience in both developing and operating psychiatric hospitals.

1.4 On January 14, 2016, HealthVest submitted a CN application to establish a 75-bed psychiatric hospital in Thurston County, Washington. HealthVest proposes to provide a full range of psychiatric services for children and adults, including inpatient services, involuntary treatment services, day hospital/partial hospitalization, intensive outpatient services, and outpatient treatments. This includes programs for adult psychiatric, geriatric, and child/adolescent patients, as well as specific programs for

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<sup>4</sup> AR 20; TR 57:2-22.

women, veterans, active duty military, those with a dual-diagnosis, those desiring a faith-based program, pain management patients, and mothers and infants.<sup>5</sup>

WAC 246-310-210 “Determination of Need”

1.5 Pursuant to WAC 246-310-210(1), a CN application must demonstrate that there is need for the project and that other services and facilities of the type proposed are not or will not be sufficiently available. There is not a specific psychiatric bed forecasting method required by Chapter 246-310 WAC. Rather, RCW 70.38.115(5) and the 1987 Washington State Health Plan<sup>6</sup> allow for discretion in selecting and applying methods to determine psychiatric bed need. The formula used by both HealthVest and the Program in this case was to compare the number of existing beds per 100,000 persons in a four county service area against the goal of 27.25 beds per 100,000 persons.<sup>7</sup> Based on projected population growth, the number of additional beds needed in the future was calculated.

1.6 Here, HealthVest proposes that its hospital will serve a four county area, including Thurston County, Lewis County, Grays Harbor County, and Mason County.<sup>8</sup>

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<sup>5</sup> AR 10-12.

<sup>6</sup> The State Health Plan was “sunset” in 1989. Although the methodology for projecting need for acute care beds is still considered viable, the same is not true for psychiatric bed need because the Department of Health is unable to obtain the required data to apply the psychiatric bed methodology. See AR 771.

<sup>7</sup> 27.25 psychiatric beds per 100,000 persons is known as the “use rate,” and is the average of the Northwest states not including Washington. This figure, which was not at dispute in this case, comes from America’s Emergency Care Environment, A State-by-State Report Card, 2014 Edition. AR 75-224. Applicants are required to identify a service area in the letter of intent filed prior to the application. WAC 246-310-080.

<sup>8</sup> AR 8.

Providence challenges the choice of a four county region as the service area, arguing that the CN analysis required a five county service area region (to include Thurston, Lewis, Grays Harbor, Mason, and Pacific counties).

1.7 Although a certificate of need was given to Providence's St. Peter Hospital in 1981 by the Department of Social and Health Services based on a five county service area (including Pacific County), that decision was made under a different regulatory structure than exists at present.<sup>9</sup> Moreover, during the instant application process stakeholders from Thurston, Lewis, Mason, and Grays Harbor showed support for the project. In contrast, HealthVest did not receive any letters of support from stakeholders in Pacific County.<sup>10</sup> Consequently, the four county proposed service area is reasonable for this application.

1.8 The only psychiatric beds currently operating within the four county region are operated by Providence's St. Peter Hospital in Thurston County.<sup>11</sup> Since 2003, Providence has reported to the Department that it had 18 psychiatric beds set-up and staffed.<sup>12</sup>

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<sup>9</sup> AR 873-900.

<sup>10</sup> TR 179:2-180:3 and TR 225:16-23 (Carona).

<sup>11</sup> St. Peter Hospital is located in Olympia, Washington.

<sup>12</sup> Providence argues that it is actually licensed to operate twenty inpatient psychiatric beds at St. Peter Hospital, and that those two additional beds should be included in the need calculations. However, it is not necessary to determine whether licensed but non-staffed beds should be counted for need determination of purposes, as HealthVest has demonstrated there is a need for 75 beds in any event.

1.9 Using population growth forecasts from the Office of Financial Management and the use rate of 27.25 per 100,000 persons, and subtracting the 18 beds currently staffed at St. Peter Hospital, there is a need for 105 additional psychiatric beds in 2016, growing to 127 additional beds by 2030.<sup>13</sup> Thus, there is numeric need for psychiatric beds in Thurston, Lewis, Mason, and Grays Harbor Counties. Consequently, HealthVest's application for 75 beds is significantly *below* the projected need for psychiatric beds in the four county area. Although Providence argues that Pacific County should have also been included in the service area, including Pacific County would only increase that need.

1.10 WAC 246-310-210(2) requires a CN applicant to show adequate accessibility of the proposed health services. In its application, HealthVest indicated that it would serve Medicare and Medicaid patients, and that it anticipated such patients would account for almost half of the hospital's revenue.<sup>14</sup> HealthVest also submitted a draft of its Charity Care Policy and a draft of its Admission Policy. HealthVest projected that 2.20% of its total revenue and 4.31% of its adjusted revenue would be charity care.<sup>15</sup> Although these values are less than the three year average of charity care provided by existing hospitals in the southwest region of Washington, it is plausible that

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<sup>13</sup> AR 936.

<sup>14</sup> AR 39.

<sup>15</sup> AR 783.

increases in Medicaid as a payor source will decrease charity rates in Washington.<sup>16</sup> However, HealthVest indicated in its draft Admission Policy that “All patients will be accepted regardless of ability to pay.”<sup>17</sup> In any event, the Program conditioned the CN award with the requirement that the facility make reasonable efforts to provide charity care in an amount comparable to or exceeding the average amount of charity care provided by hospitals in the southwest region of Washington.

1.11 In its draft Admission Policy, HealthVest indicated that it would treat patients “without regard to race, color, religion, sex, or natural origin.”<sup>18</sup> The Program conditioned the CN award with the reasonable requirement that HealthVest submit a final approved copy of the Admission Policy for approval by the Program.

1.12 Based on the Application Record, the admitted exhibits, and the testimony at hearing, the Presiding Officer finds that the HealthVest fulfills the need determination criteria of WAC 246-310-210, subject to the acceptance of the aforementioned conditions.<sup>19</sup>

#### WAC 246-310-220 “Financial Feasibility”

1.13 Pursuant to WAC 246-310-220, an applicant for a CN must demonstrate that the project is financially feasible. The applicant must show that: (1) the immediate

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<sup>16</sup> HealthVest points out that the trend has been for hospitals to provide less uncompensated care while serving more Medicaid patients as a result of the enactment of the Affordable Care Act. See AR 28.

<sup>17</sup> AR 67.

<sup>18</sup> AR 67.

<sup>19</sup> RCW 70.38.115(4) provides that a conditional certificate of need may be issued under specific conditions.

and long-range capital and operating costs of the project can be met; (2) the costs of the project will probably not result in an unreasonable impact on the costs and charges for health services; and (3) the project can be appropriately financed.

1.14 HealthVest proposes to have the hospital operational in 2018. HealthVest provided a pro forma financial statement for the years 2018-2020. The pro forma statement predicts profitability by 2020.<sup>20</sup> HealthVest estimates the total capital costs for the project to be \$18,391,000, and plans to pay for these costs from HealthVest's cash reserves.<sup>21</sup> With its application, HealthVest provided an unaudited January 31, 2016, balance sheet showing approximately \$27 million in cash reserves available to complete this project.<sup>22</sup>

1.15 An audited balance sheet from HealthVest dated December 31, 2015, was introduced into evidence at the hearing. This balance sheet showed \$12.2 million in then-current assets and cash and cash equivalents. (Exhibit P-11). Although Providence objects to the January 31, 2016, balance sheet being unaudited, the fact is that the January 31, 2016, balance sheet was *more current* than the December 31, 2015, audited balance sheet. In addition, the \$27 million cash reserves was confirmed by a February 22, 2016, letter from HealthVest's Chief Financial Officer, and by a May 16, 2016, letter from City Bank Texas. This amount was confirmed at hearing from

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<sup>20</sup> AR 270.

<sup>21</sup> AR 34-40. HealthVest also plans to utilize \$10,000 grant money that it has received from the Washington State Department of Commerce. AR 366.

<sup>22</sup> AR 337.

Dr. Kresch.<sup>23</sup> The Presiding Officer finds Dr. Kresch's testimony to be credible on this issue. HealthVest demonstrated that it had available funds to finance this project. Also, the Program reasonably attached a condition to the CN requiring that HealthVest finance the project using corporation reserves and the \$10,000 grant money that it had received from the Washington State Department of Commerce.<sup>24</sup>

1.16 While working for Ascend, the management team at HealthVest opened five new hospitals using available cash. For each of these hospitals, the average development time was 12 months; each was completed within budget.<sup>25</sup> The record indicates that HealthVest is financially healthy.<sup>26</sup>

1.17 To demonstrate compliance with WAC 246-310-220(2), Providence must show that 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. This has traditionally included requiring an applicant to demonstrate "site control," in order to provide an accurate determination of the cost of the project.

1.18 Along with its application, HealthVest submitted an unsigned draft lease

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<sup>23</sup> TR 121.

<sup>24</sup> AR 762.

<sup>25</sup> AR 20.

<sup>26</sup> AR 636; TR 121-122.

agreement between Vest Thurston Realty, LLC, (the tenant) and DM Ventures Woodland (the landlord).<sup>27</sup> The draft lease provided for a 30-year term, with the potential for two ten-year extensions of the lease.<sup>28</sup> DM Ventures Woodland subsequently submitted a letter to the Program in support of HealthVest's proposed facility.<sup>29</sup>

1.19 After receiving the draft lease, the Program asked HealthVest an additional screening question regarding the lease amount of each of the first full three years of operation.<sup>30</sup> This information was subsequently provided to the Program. As a condition of receiving the CN, the Program indicated that “[p]rior to providing services, US HealthVest, LLC will provide a copy of the executed intercompany ‘lease’ between Vest Thurston Realty, LLC and DM Ventures Woodland, LLC for the site. The executed lease must be consistent with the draft reviewed by the department.”<sup>31</sup>

1.20 In Prehearing Order No. 4, the undersigned Presiding Officer made the following ruling:

Providence argues that a draft lease cannot demonstrate site control. However, Providence has not pointed to any cases that hold a draft lease would fail to demonstrate site control, nor has Providence pointed to any cases that hold that a draft lease must be signed by the parties. Given that HealthVest had filed a CN application which was *subsequent*

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<sup>27</sup> Vest Thurston Realty, LLC is a wholly owned subsidiary of HealthVest, LLC.

<sup>28</sup> AR 301-302.

<sup>29</sup> AR 458.

<sup>30</sup> AR 359-360.

<sup>31</sup> AR 769.

*to approval by the Department*, it is reasonable that a draft lease is acceptable. Similarly, there is no reason why a draft lease agreement would be *signed*, as leases are signed when finalized. (emphasis in original)

An unsigned draft lease does not demonstrate a lack of site control. The question, then, is whether there is any other reason that HealthVest has not demonstrated site control.

1.21 At the hearing, Providence called Carl Halsan to testify. Providence previously argued that Carl Halsan would give the opinion that the project would not be approved through the City of Lacey's conditional use permit process. See Oct 20, 2016, Declaration of Brian Grimm. However, such testimony from Mr. Halsan was not forthcoming during the hearing.<sup>32</sup>

1.22 The site at 602 Woodland Park SE allows a psychiatric hospital as an essential public facility through a Conditional Use Permit. Such a permit would have to be obtained from the City of Lacey. Accordingly, HealthVest provided a letter from the City of Lacey's Community Development Director, indicating that HealthVest's proposed use was "permitted at that location as an essential public facility through a Conditional Use Permit (CUP)."<sup>33</sup> It is true that HealthVest must still obtain land use permits from the City of Lacey prior to proceeding with the project. However, there is nothing in the language of WAC 246-310-220(2) that requires a CN applicant to do so before the CN is approved.

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<sup>32</sup> During the hearing, Providence objected to a question from HealthVest to Carl Halsan as to the reasonableness of HealthVest's proposed timeframe. Ruling was reserved. See TR 472-474. The objection is sustained as it was outside the scope of rebuttal.

1.23 For the project at Woodland Square, it is undisputed that it is possible for HealthVest to obtain the necessary conditional use permit. Nevertheless, the determination as to whether or not the proposed facility will receive zoning approval is ultimately a political issue for the City of Lacey to decide. The undersigned Presiding Officer will not make a decision on behalf of the City of the Lacey with regard to this issue.

1.24 Providence also argues that even if the City of Lacey approves the conditional use permit, changes may be required that increase the cost of the project. Again, whether or not any changes may be required is a decision for the City of Lacey to make- not the undersigned Presiding Officer. In the event cost changes are required that increase the cost of the project, HealthVest would be required to apply for an amended certificate of need if the costs of the project increase by more than twelve percent or fifty thousand dollars. See WAC 246-310-570(1)(e).

1.25 To show that its application meets the criteria outlined in WAC 246-310-220(3), HealthVest must show that the project can be appropriately financed. Given the successful track record of the HealthVest management team in financing previous hospitals, as well as HealthVest's success in equity investment and its demonstration of cash reserves, HealthVest has shown that the project can be appropriately financed.

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<sup>33</sup> AR 279.

1.26 Based on the Application Record, admitted exhibits, and the testimony at hearing, the Presiding Officer finds that HealthVest fulfills the financial feasibility criteria of WAC 246-310-220.

WAC 246-310-230 “Structure and Process of Care”

1.27 WAC 246-310-230 requires that a CN applicant must demonstrate that it can meet five criteria for structure and process of care. Specifically, these criteria include: adequate staffing; an appropriate organizational structure and support; conformity with licensing requirements; promotion in continuity in the provision of health care; and provision of safe and adequate care.

1.28 HealthVest does not currently operate a hospital in Washington;<sup>34</sup> however, HealthVest does operate a psychiatric hospital in Illinois. The evidence shows that hospital has maintained accreditation.<sup>35</sup> In addition, HealthVest has indicated what steps it intends to take to ensure compliance with the facility in Thurston County. For example, HealthVest identified staff recruitment strategies and necessary ancillary and support services, as well as community-based programs with which it intends to collaborate.<sup>36</sup> Such plans will also promote continuity in the provision of care. As a condition of granting the CN, the Program imposed relevant conditions on HealthVest, including that the Program review and approve key staff and a list of ancillary and

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<sup>34</sup> HealthVest has received a CN to develop a psychiatric hospital in Snohomish County, Washington. See AR 20.

<sup>35</sup> AR 838-846.

<sup>36</sup> AR 10-12, 41-45, and 267.

support vendors.<sup>37</sup> HealthVest also indicated that it was planning to seek Joint Commission accreditation.<sup>38</sup> Given that the management team at HealthVest previously was the management team at Ascend, and that Ascend successfully developed and operated multiple hospitals, there are reasonable assurances that HealthVest will be able to comply with licensing requirements, as well as provide safe and adequate care.

1.29 Based on the Application Record, the admitted exhibits, and the testimony at hearing, the Presiding Officer finds that HealthVest fulfills the structure and process of care criteria of WAC 246-310-230. The Presiding Officer also finds that the relevant conditions listed in the Program's letter of July 5, 2016, are reasonable.

WAC 246-310-240 "Cost Containment"

1.30 Finally, a CN application must meet the criteria set forth in WAC 246-310-240. These criteria include the following: (1) no superior alternatives, in terms of cost, efficiency, or effectiveness, are available or practicable; (2) costs of construction, for those projects involving construction, are reasonable; and (3) the project will involve improvements or innovations in the financing and delivery of health services.

1.31 HealthVest considered constructing a new hospital at a number of sites. Providence argues that a potentially superior site would be closer to an acute care

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<sup>37</sup> AR 762.

<sup>38</sup> AR 45.

hospital; or would be an entirely new building or a greenfield site; or not have any land use permitting issues.<sup>39</sup>

1.32 The proposed site at Woodland Square is not located a great distance from an acute care hospital. It is undisputed that St. Peter Hospital is located in Olympia, Washington.<sup>40</sup>

1.33 Given the demonstrated need for psychiatric beds in the four county service area, HealthVest determined to establish a new psychiatric hospital, as doing nothing would not address the shortage of beds.<sup>41</sup> Next, HealthVest considered two options for a psychiatric hospital: (1) building a new facility, or (2) converting an existing facility to a psychiatric hospital. Consequently, HealthVest examined multiple siting options. Eventually, HealthVest narrowed its choices down to two sites: a greenfield site, and its selected site at Woodland Square. HealthVest reasonably chose the Woodland Square site because it would be quicker and be a less expensive project than constructing a new building on a greenfield site.<sup>42</sup>

1.34 With regard to land use permitting issues, as noted in Paragraphs 1.22–1.24 above, the undersigned Presiding Officer will not make a decision for the City of Lacey. Given that the greenfield site alternative was more costly to build and would involve the construction of an entirely new facility over a longer period of time,

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<sup>39</sup> “Greenfield” is not explicitly defined in the administrative rules applicable to CN hearings. Black’s Law Dictionary (Ninth Edition, 2009) defines a greenfield site as “[l]and that has never been developed.”

<sup>40</sup> AR 873.

<sup>41</sup> AR 802.

HealthVest actually chose the superior alternative here. There is no superior alternative and the costs for proceeding at the 635 Woodland Square site are reasonable.

1.35 Given the limited number of psychiatric beds currently available in the four county service area, along with the great unmet need, there can be no dispute that the delivery of health services in the region will be improved.

1.36 Based on the Application Record, the admitted exhibits, and the testimony at hearing, the Presiding Officer finds that HealthVest fulfills the structure and process of care criteria of WAC 246-310-400.

1.37 In consideration of the above, the Presiding Officer finds that HealthVest meets the requirements of WAC 246-310-210, WAC 246-310-220, WAC 246-310-230, and WAC 246-310-240. The Presiding Officer further finds that, given that HealthVest does not yet operate a hospital in Washington, the conditions set out by the Program in its July 5, 2016, letter to HealthVest are reasonable and should be imposed.

## **II. CONCLUSIONS OF LAW**

2.1 The Department of Health is authorized and directed to implement the certificate of need program. RCW 70.38.105(1). Establishment of a psychiatric hospital requires a certificate of need. RCW 70.38.105(4)(a). The applicant must show or establish that its application meets all of the applicable criteria. WAC 246-10-606. An applicant “shall submit a certificate of need application in such form and manner and containing such information as the department has prescribed and published as necessary to such a certificate of need.” WAC 246-310-090(1). Admissible evidence in

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<sup>42</sup> TR 88-89 and 98-99.

certificate of need hearings is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. RCW 34.05.452(1). The standard of proof is preponderance of the evidence. WAC 246-10-606.

2.2 The Presiding Officer (on delegated authority from the Secretary of Health) is the agency's fact finder and decision maker. *DaVita v. Department of Health*, 137 Wn. App. 174, 182 (2007) (*DaVita*). The Presiding Officer engages in a *de novo* review of the record. See, *University of Washington Medical Center v. Department of Health*, 164 Wn.2d 95 (2008). The Presiding Officer may consider the Program's written analysis in reaching his decision but is not required to defer to the Program analyst's decision or expertise. *DaVita*, 137 Wn. App. at 182-183.

2.3 In acting as the Department's decision maker, the Presiding Officer reviewed the application record, the admitted exhibits, the hearing transcript, and the closing briefs submitted by the parties pursuant to RCW 34.05.461(7). The Presiding Officer applied the standards found in WAC 246-310-200 through WAC 246-310-240 in evaluating the applications submitted by HealthVest.

#### Certificate of Need Requirements

2.4 WAC 246-310-200 sets forth the "bases for findings and actions" on CN applications, to wit:

- (1) The findings of the department's review of certificate of need applications and the action of the secretary's designee on such applications shall, with the exceptions provided for in WAC 246-310-470 and 246-310-480 be based on determinations as to:
  - (a) Whether the proposed project is needed;

- (b) Whether the proposed project will foster containment of the costs of health care;
  - (c) Whether the proposed project is financially feasible; and
  - (d) Whether the proposed project will meet the criteria for structure and process of care identified in WAC 246-310-230.
- (2) 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.

2.5 WAC 246-310-210 defines the “determination of need” in evaluating CN applications, to wit:

The determination of need for any project shall be based on the following criteria, except these criteria will not justify exceeding the limitation on increases of nursing home beds provided in WAC 246-310-810.

- (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. The assessment of the conformance of a project with this criterion shall include, but need not be limited to, consideration of the following:
  - ...
  - (b) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;
- (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 assessment of the conformance of a project with this

criterion shall include, but not be limited to, consideration as to whether the proposed services makes a contribution toward meeting the health-related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services, particularly those needs identified in the applicable regional health plan, annual implementation plan, and state health plan as deserving of priority. Such consideration shall include an assessment of the following:

- (a) The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;
- (b) The past performance of the applicant in meeting obligations, if any, under any applicable federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal financial assistance (including the existence of any unresolved civil rights access complaints against the applicant);
- (c) The extent to which medicare, medicaid, and medically indigent patients are served by the applicant; and
- (d) The extent to which the applicant offers a range of means by which a person will have access to its services (e.g., outpatient services, admission by house staff, admission by personal physician).

2.6 Based on the above Findings of Fact, the Presiding Officer determines that HealthVest's application meets the criteria for CN set forth in WAC 246-310-210.

2.7 WAC 246-310-220 sets forth the “determination of financial feasibility” criteria to be considered in reviewing CN applications, to wit:

The determination of financial feasibility of a project shall be based on the following criteria.

- (1) The immediate and long-range capital and operating costs of the project can be met.
- (2) The costs of the project, including any construction costs, will probably not result in an unreasonable impact on the costs and charges for health services.
- (3) The project can be appropriately financed.

2.8 Based on the above Findings of Fact, the Presiding Officer determines that HealthVest’s application meets the criteria for CN set forth in WAC 246-310-220.

2.9 WAC 246-310-230 sets forth “the criteria for structure and process of care” to be used in evaluating CN applications, to wit:

A determination that a project fosters an acceptable or improved quality of health care shall be based on the following criteria.

- (1) A sufficient supply of qualified staff for the project, including both health personnel and management personnel, are available or can be recruited.
- (2) The proposed service(s) will have an appropriate relationship, including organizational relationship, to ancillary and support services, and ancillary and support services will be sufficient to support any health services included in the proposed project.
- (3) There is reasonable assurance that the project will be in conformance with applicable state licensing requirements and, if the applicant is or plans to be certified under the medicaid or medicare program, with the applicable conditions of participation related to those programs.

- (4) The proposed project will promote continuity in the provision of health care, not result in an unwarranted fragmentation of services, and have an appropriate relationship to the service area's existing health care system.
- (5) There is reasonable assurance that the services to be provided through the proposed project will be provided in a manner that ensures safe and adequate care to the public to be served and in accord with applicable federal and state laws, rules, and regulations. The assessment of the conformance of a project to this criterion shall include but not be limited to consideration as to whether:
  - (a) The applicant or licensee has no history, in this state or elsewhere, of a criminal conviction which is reasonably related to the applicant's competency to exercise responsibility for the ownership or operation of a health care facility, a denial or revocation of a license to operate a health care facility, a revocation of a license to practice a health profession, or a decertification as a provider of services in the medicare or medicaid program because of failure to comply with applicable federal conditions of participation; or
  - (b) If the applicant or licensee has such a history, whether the applicant has affirmatively established to the department's satisfaction by clear, cogent and convincing evidence that the applicant can and will operate the proposed project for which the certificate of need is sought in a manner that ensures safe and adequate care to the public to be served and conforms to applicable federal and state requirements.

2.10 Based on the above Findings of Fact, the Presiding Officer determines that HealthVest's application meets the criteria for CN set forth in WAC 246-310-230.

2.11 WAC 246-310-240 sets forth the “determination of cost containment” criteria to be used in evaluating a CN application, to wit:

A determination that a proposed project will foster cost containment shall be based on the following criteria:

- (1) Superior alternatives, in terms of cost, efficiency, or effectiveness, are not available or practicable.
- (2) In the case of a project involving construction:
  - (a) The costs, scope, and methods of construction and energy conservation are reasonable; and
  - (b) The project will not have an unreasonable impact on the costs and charges to the public of providing health services by other persons.
- (3) The project will involve appropriate improvements or innovations in the financing and delivery of health services which foster cost containment and which promote quality assurance and cost effectiveness.

2.12 Based on the above Findings of Fact, the Presiding Officer determines that HealthVest’s application meets the criteria for CN set forth in WAC 246-310-240.

2.13 Based on the above Findings of Fact and Conclusions of Law, the Presiding Officer determines that HealthVest has met its burden of proof in demonstrating that its application meets the criteria for CN set forth in WAC 246-310-210, WAC 246-310-220, WAC 246-310-230, and WAC 246-310-240. The Presiding Officer further finds the conditions that the Program placed on HealthVest in its letter of July 5, 2016, to be both necessary and reasonable. The Presiding Officer determines that the CN should be granted to HealthVest.



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**Effective date: If administrative review is not timely requested as provided above, this initial order becomes a final order and takes effect, under WAC 246-10-701(5), at 5:00 pm on \_\_\_\_\_. Failure to petition for administrative review may result in the inability to obtain judicial review due to failure to exhaust administrative remedies. RCW 34.05.534.**

Final orders will be reported to the National Practitioner Databank (45 C.F.R. Part 60) and elsewhere as required by law. Final orders will be placed on the Department of Health's website, and otherwise disseminated as required by the Public Records Act (Chap. 42.56 RCW) and the Uniform Disciplinary Act. RCW 18.130.110. All orders are public documents and may be released.

For more information, visit our website at:

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