

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

In Re: Comparative Review of Certificate) of Need Applications of Olympic) Peninsula Kidney Center and DaVita,) dba Poulsbo Community Dialysis Center.) Applicant.) <hr style="width: 100%; border: 0.5px solid black;"/>	Docket No. 04-06-C-2003CN FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER
---	--

APPEARANCES:

Applicant, Olympic Peninsula Kidney Center, by
Davis Wright Termaine, per
Douglas C. Ross, Attorney at Law

Intervener, DaVita, Inc., by
Law Offices of James M. Beaulaurier, per
James M. Beaulaurier, Attorney at Law

Department of Health Certificate of Need Program, by
The Office of the Attorney General, per
Richard A. McCartan, Assistant Attorney General

PRESIDING OFFICER: Zimmie Caner, Health Law Judge

This is an appeal of the Department of Health Certificate of Need Program (the Program) comparative analysis and resulting issuance of a Certificate of Need (CON) to DaVita for a kidney dialysis treatment facility and denial of Olympic Peninsula Kidney Center (Olympic) application for a kidney dialysis treatment facility CON. Reversed.

ISSUES

Is the Program's analysis and utilization of price competition and/or patient choice reasonable and supported by the evidence in the administrative record?

Did the Program comply with the rulemaking requirements of the Washington Administrative Procedures Act when it applied a competition/patient choice factor and/or when it utilized a comprehensive review process?

//////////

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER

HEARING

During the hearing on October 6 and 7, 2004, Program Analyst Randy Huyck, Olympic Executive Director Jeff Lehman, Olympic Operations Administrator Robert Schwartz and DaVita Consultant Robert McGuirk testified. The deposition of Program Manager Janis Sigman was admitted in lieu of live testimony as exhibit 6. A copy of the Program's administrative record (AR pages 1 through 1083) regarding the Program's approval of the DaVita CON application, the Program's denial of the Olympic application and the Program's underlying comparative analysis was admitted as Exhibit 1. The Program's "Executive Summary of Need Evaluation of DaVita and Franciscan Health System" was admitted as Exhibit 2. A driving distance chart and maps of Kitsap County and Olympic Peninsula were admitted as Exhibits 3 through 5.

Closing arguments were presented through briefs after the hearing transcript was received by the parties. The final brief was filed on January 14, 2005.

I. FINDINGS OF FACT

1.1 On August 1, 2003, Olympic applied to the Program for a CON to establish 12-station kidney dialysis treatment facility that would be located in Poulsbo, Washington. On August 5, 2003, DaVita applied to the Program for CON to establish a 13-station kidney dialysis treatment facility within approximately three miles of Olympic's proposed Poulsbo facility. Both applications proposed to serve the same areas in North Kitsap and Jefferson counties. The closest existing facility operated by OLYMPIC in Bremerton, is approximately 18 miles from the applicants' proposed sites in Poulsbo.

Comparative Review

1.2 Because Olympic and DaVita applied for a similar dialysis facility CON within the same week and proposed to serve the same area, the Program decided to conduct a "comparative review" of the two applications. As a result, the applications were assigned to one of the Program's analysts who reviewed the applications together and on the same review schedule.

1.3 Prior to the commencement of the comparative review process, the Program sent DaVita and Olympic letters on August 5, 2003 stating it would conduct a comparative review of the two applications. AR at 134. Prior to the issuance of the Program's May 21, 2004 analysis and decision, Olympic did not object to the comparative review process. 10/6/04 RP¹ at 143-4. During the review process both applicants submitted extensive information criticizing each other's application. These documents demonstrate that they knew the Program's review was a competitive process that might result in only one of the applicants receiving a CON. AR 1 at 187-227 and 228-317.

1.4 Randy Huyck was the Program analyst assigned to conduct the "comparative review". During this process, Mr. Huyck and other CON analysts met on a weekly basis with their supervisor Janis Sigman to discuss the applications they were reviewing. As a result, Ms. Sigman, advised Mr. Huyck in his "comparative review" of the DaVita and Olympic applications.

1.5 After conducting the comparative review, Mr. Huyck wrote the Program's "evaluation" report that is the basis of the denial of Olympic's application and the granting of DaVita's CON. AR at 122-336.

1.6 On May 21, 2004, after the completion of the review process, one rather than two evaluation reports were issued addressing the Program's comparative analysis of both applications. Based on this comparative review, the Program rejected Olympic's application and granted DaVita a CON for a kidney dialysis facility, as the "superior" and

¹ Report of Proceedings (RP)

more “efficient” applicant under WAC 246-310-240(1). On June 18, 2004, Olympic appealed the Program’s decision.

Determination of need

1.7 The Program’s first step in this comparative review was the determination of need under WAC 246-310-280 using Northwest Renal Network (NRN) facility utilization data. AR 328. Mr. Huyck completed the needs analysis using NRN data to calculate and project the need for 12 new kidney dialysis stations for Kitsap and Jefferson counties by 2007. AR at 328 and 10/6/04 RP at 22-44. Even though the Program projected the need for 12 stations by 2007, it only granted a CON for only 10 stations because the numbers and analysis provided in DaVita’s application supported need or utilization projections for 10 stations. Similarly, Mr. Huyck testified that the numbers and analysis provided in Olympic’s application supported need for 8 stations. 10/6/04 RP at 78-81.

1.8 Once need was determined, Mr. Huyck evaluated the “financial feasibility”, “structure and process of care” and “cost containment” of each proposal pursuant to WAC 246-310-220 through 246-310-240. Mr. Huyck initially concluded that DaVita’s and Olympic’s applications each complied with these criteria, but there is need for only one, not two facilities. AR at 339. As a result Mr. Huyck turned to charity care and competition/patient choice as tie breakers to identify the “superior applicant”. AR 339.

1.9 As Mr. Huyck wrote in the Program’s evaluation:

Lacking a clear disqualification of either applicant on any of the other criteria, the department concludes that the need demonstrated earlier in this evaluation, coupled with the introduction of a choice of providers in this service area and the lack of provision for charity care demonstrated by Olympic leads the department

to conclude that the DaVita project appears to be the best available option for the community.

AR at 339.

1.10 Mr. Huyck concluded in the analysis that the “Olympic application does not meet the cost containment criteria in WAC 246-310-240.” AR 337.

Charity care.

1.11 Prior to the October 2004 hearing, charity care was at issue. AR 330 and 339. During the hearing Mr. Huyck admitted that he erroneously concluded that Olympic did not include any provision for charity care in its proposed budget projections (pro forma). AR 330 and 10/6/04 RP at 74-5. As a result, patient choice and price competition are the remaining factors utilized by the Program to conclude DaVita is the “superior” applicant for the Poulsbo CON.

Patient choice

1.12 Olympic is the only kidney dialysis provider in Kitsap County with one facility in Port Orchard and one in Bremerton. Exhibit 5. There are no dialysis facilities in Jefferson County, the county north and west of Kitsap County. Exhibit 5. Bremerton is approximately 18.6 miles south of Poulsbo. Port Orchard is further south, approximately 23.2 miles south of Poulsbo. Poulsbo is located in northern Kitsap County. Exhibit 4.

1.13 A second provider in reasonably close proximity to the existing Bremerton facility would provide a choice between two providers to the dialysis patient. But a new Poulsbo facility will be approximately a 31 minute drive to the closest existing facility in Bremerton. This facility is operated by Olympic. Therefore granting the Bremerton

CON to DaVita rather than Olympic would only provide a realistic choice to a small number of patients.

1.14 What is a reasonable commute for a dialysis patient who dialyzes for approximately 4 hours, 3 times a week, 52 weeks a year? In a recent decision the Program concluded that maximum or “default” time should be reduced from 30 to 20 minutes considering that is 40 minutes round trip, three times a week. Exhibit 2. This, of course, is all relative considering the population density and other factors. Although the Program has not consistently applied the 20 minute maximum drive time, 20 minutes is a reasonable maximum commute in the case at hand considering the distance between Poulsbo and Bremerton. A 20 minute commute standard limits the area between Poulsbo and Bremerton that would encompass patients with “choice” or in other words a reasonable commute time.

1.15 Another factor to take in consideration is that many patients travel by public transportation therefore lengthening their commute time with the multiple stops. This narrows the number of patients even further. For example only one half of Olympic’s north Kitsap County patients drive themselves to their dialysis treatments. 10/7/04 RP at 59.

1.16 A “new” provider in Poulsbo would only provide choice to those patients who either live or work in a limited area between Poulsbo and Bremerton. Patients close to or north of Poulsbo do not have a realistic choice, considering the longer round trip commuting time to Bremerton, especially those who rely on public transportation. Only five of the thirty five Olympic patients identified by Olympic who will switch dialysis

care to a new Poulsbo facility from the Olympic Bremerton facility (because they live north of or closer to Poulsbo than Bremerton) are working. Of those working patients, three work north of Poulsbo and two work midway between Poulsbo and Bremerton. 10/7/04 RP at 58-9. Therefore only two of thirty five working patients would have a realistic choice of providers as a result of their job location.

1.17 It is unclear how many future patients will live or work between Bremerton and Poulsbo. Population is denser between these two cities than north or west of Poulsbo, but evidence indicates that few existing patients would have a realistic “choice” due to the commute time. 10/7/04 RP at 58-59. Evidence and logic indicate that patients want shorter commutes for dialysis treatments, as several patients stated in letters. AR at 210-214.

1.18 No evidence was presented indicating patient or institutional dissatisfaction with Olympic care and services. To the contrary, the records include patient and local institution letters supporting Olympic’s application. AR at 209-214. Several patient letters discuss the high quality of care received at Olympic compared with care receive from other facilities when they travel. AR 210-214.

Cost Containment – Price competition

1.19 The Program chose DaVita over Olympic assuming the introduction of a new provider would stimulate competition and therefore lower fees. The Program’s analyst Mr. Huyck admitted that DaVita’s operating revenues per treatment compared to Olympic indicate that their charges might be greater than Olympic’s charges. 10/6/04 RP at 124. If DaVita would compete and therefore lower its rates, Mr. Huyck agreed

that DaVita's revenue projections would be overstated, and it is possible that DaVita will no longer meet the financial feasibility criteria. 10/6/04 RP at 126-7.

1.20 The Program relies on a common sense argument to support its conclusion that patient choice will probably result in improved quality care and better price competition, therefore lower prices resulting from two providers negotiating with HMOs/insurance companies. Ms. Sigman and Mr. Huyck admitted that they have no data, studies or other information to support this conclusion. Exhibit 6 at 17-188 and 10/6/04 RP at 109-110, 151. They did not contact any HMO or insurance company that provides dialysis coverage for patients in this service area to pursue this theory.

1.21 No evidence was presented indicating the addition of a new provider in the Poulsbo area would stimulate lower fees in the Poulsbo/Bremerton service area. It is unlikely that DaVita will stimulate lower Olympic commercial fees, since Olympic commercial rates and projected rates are much lower than DaVita's projected average commercial rates for the first three years of operation. AR 883-6, 902-6 and 10/6/04 RP at 123-178. Mr. Huyck's supervisor, Ms. Sigman admits that typical market forces such as competition do not always keep a check on price of health care and did not explain when competition drives health care costs down rather than up. Exhibit 6 at 31-34. Therefore considering the proposed budgets and projected fees, DaVita's proposal may not satisfy the cost containment criteria and Olympic's proposal does.

1.22 Olympic is a non-profit and DaVita a public for-profit corporation under state and federal laws. This should not be the deciding factor. One must consider the specific facts of each case. Olympic has a volunteer local Board of eleven trustees

including two patients and two community doctors. 10/6/04 RP at 155-6 and AR 129. In addition to community support reflecting good quality care (AR at 209-226), Olympic has significantly lower commercial rates and projected rates than DaVita's projected commercial rates. Evidence from DaVita's application and Olympic's analysis support this conclusion. AR at 203-4, 293-4 and 10/7/04 RP at 178-181. The Program did not find any error in Olympic's analysis, but merely made a general conclusion regarding projected rates by other for-profit and non-profit dialysis provider applicants. AR 332. That response fails to address the specific facts in this case.

Operating expenses – financial feasibility.

1.23 DaVita's operating expenses are more than Olympic's even though both facilities would provide comparable patient care and services. AR 80, 334, 500. Olympic's projected operating expenses for year one of operation is \$1,049,443, \$1,191,528 for year two and \$1,339,794 for year three. AR at 330. DaVita's projected operating expenses for year one is \$1,585,815; \$1,761,325 for year two; and \$2,170,295 for year three. AR at 331. These figures do not accurately reflect DaVita's projected operating expenses because DaVita understated its rental expenses in its pro forma statement. 10/6/04 RP at 182-5. Therefore DaVita's operating expenses are even greater. 10/6/04 RP at 182-185, AR at 203, 500 (pro forma operating statement) and 841-2 (lease).

1.24 DaVita claimed the pro forma figures are correct because the rent figures were reduced by depreciation of tenant improvements that will be made under its lease. 10/7/04 RP at 15. Mr. Lyman, who is a certified accountant, explained that under

general accounting principles it is not appropriate to combine tenant improvement depreciation with lease expenses on the rent line of the operating budget. 10/7/04 RP at 15-16. The tenant improvement depreciation should be listed separately as it relates to capital costs vs. annual operating expenses. Tenant improvements have a longer depreciation period (usable life) than one year, so rent expenses without the tenant improvement deduction more accurately reflects the annual cost of renting the facility. 10/7/04 RP at 15-16.

1.25 As a result of this accounting error, DaVita's rent expense is approximately \$36,000 more the first year of operation and \$62,000 more the second year than DaVita stated in its pro forma. 10/6/04 RP at 182-185. Therefore DaVita's projected operating expenses for year one would be approximately \$1,585,815 vs. Olympic \$1,049,443, and DaVita's year two would be approximately \$1,823,352 vs. Olympic's \$1,191,528. This is a significant error in operating expenses, roughly one half million dollars each year. These figures raise great doubt to the financial feasibility (WAC 246-310-220), and indicate that DaVita is not the superior applicant under a cost containment perspective.

Estimated opening date

1.26 The Olympic Bremerton facility was operating at greater than one hundred percent capacity; therefore there was a clear need for a timely opening of a new facility in Poulsbo. The cost and time savings to patients and community health care facilities justify using opening time as a tie-breaker. Ms. Sigman testified that this could potentially be a tie breaking factor. Exhibit 6 at 55.

1.27 DaVita's application estimated opening in approximately fifteen months, and Olympic stated it could open in approximately five months. 10/7/04 RP at 41. Even though there was a delay in the opening of one of Olympic's two existing facilities, Olympic's five month opening prediction is credible. The delay was caused by the prior tenant's (pediatric clinic) relocation difficulties. The pediatric clinic did not vacate the space as scheduled, a factor Olympic could not control or anticipate. 10/7/04 RP at 41. Olympic's proposed Poulsbo space is unoccupied; therefore prior tenant vacating the space is not at issue. Olympic has consulted with architect and contractor as to a plan and timeline. 10/7/04 RP at 41. Therefore Olympic's estimated time to open is credible.

1.28 In a letter to the Program, the executive director of Norwood Lodge, a short-stay rehab facility listed four reasons for its support of Olympic's application. One of those reasons for support is that Olympic's facility should be completed approximately one year earlier than DaVita, saving Norwood Lodge "many additional dollars in staff and transport time and more importantly, a tremendous inconvenience on the part of the patients." AR at 215. Ms. Zink, the Administrator of Montclair Park and Haven Crest, a Poulsbo senior assisted living community, also wrote a letter of support because the proposed Olympic facility has an earlier planned completion time.

AR at 219.

II. CONCLUSIONS OF LAW

Purpose of the Health Planning & Development Act

2.1 In response to the 1974 National Health Planning and Resources Development Act, the Washington legislature adopted Washington's 1997 Health

Planning & Development Act creating the certificate of need program. Chapter 70.38 RCW and *St. Joseph Hospital & Health Care Center v. Department of Health*, 125 Wn2d 733, 753 (1995). One of the purposes of the federal and state health care planning acts was to control health care costs. *Id.* Both legislative bodies were concerned that competition in health care “had a tendency to drive health care cost up rather than down, and government therefore needed to restrain marketplace forces. *Id.* at 741. The CON regulations are therefore designed in part to control rapid rising health care cost by limiting competition within the health care industry”. *Id.*

2.2 The state CON requirements limit provider entry into the health care markets so the development of services and resources “should be accomplished in a planned, orderly fashion, consistent with identified priorities and without unnecessary duplication or fragmentation”. RCW 70.38.015(2).

2.3 This health planning process must consider the “cost-effectiveness and cost-benefit analysis” and provide accessible health care services “while controlling excessive increases in costs”. RCW 70.38.015(1) and (5). The Washington act also encourages the involvement of consumers in health planning. RCW 70.38.015(1). The Olympic board of trustees includes two patients (consumers).

2.4 The Department of Health (the Program) is responsible for managing the CON chapter under chapter 70.38 RCW. RCW 70.38.105(1). Certificates of Need shall be issued or denied in accordance with Health Planning & Development Act and the Department rules which establish the review procedures and criteria for the CON program in chapter 246-310 WAC. RCW 70.38.115(1).

Certificate of need criteria

2.5 An applicant for a CON shall establish that it meets all applicable criteria. WAC 246-10-606. The Program then renders a decision whether to grant a CON in a written analysis that must contain sufficient information that supports its decision. WAC 246-310-200 outlines the basic criteria that the Program must address in determining whether it should grant or deny a CON. Those criteria are “need” (WAC 246-310-210), “financial feasibility” (WAC 246-310-220), “structure and process (quality) of care” (WAC 246-310-230), and “cost containment” (WAC 246-310-240). In evaluation of these criteria the Program relied upon unfounded theories and made erroneous conclusions, and therefore erroneously granted DaVita a CON and denied Olympic a CON.

Burden of proof

2.6 An applicant denied a CON has the right to an adjudicative proceeding. RCW 34.05.413(2). The burden of proof in an adjudicative proceeding regarding a CON is preponderance of the evidence. WAC 246-10-606. Evidence should be the kind that “reasonably prudent persons are accustomed to rely in the conduct of their affairs.” RCW 34.05.461(4). The Program’s decision is not reasonable in light of substantial evidence to the contrary that Olympic is the “superior” applicant WAC 246-310-240.

Cost containment analysis under WAC 246-130-240

2.7 The Program initially found that both applicants qualified for the need of only one CON, therefore it had to decide which was the better applicant under

Chapter 70.38 RCW and chapter 246-310 WAC. The Program turned to a competition/choice analysis under WAC 246-130-240(1) which concluded that “Olympic does not meet the cost containment criteria in WAC 246-310-240.” AR 337.

2.8 The pertinent part of WAC 246-310-240 states:

A determination that a proposed project will foster cost containment shall be based on the following criteria: (1) Superior alternative, in terms of cost, efficiency, or effectiveness, are not available or practicable.

2.9 Olympic, not DaVita, is the “superior” more “effective” of the two applicants. DaVita’s presence in Poulsbo would probably not drive down Olympic’s fees because DaVita’s projected fees are more than Olympic’s, and DaVita’s corrected projected operating expenses (with accurate annual rental expenses) are much more than Olympic’s. DaVita claims it will offer competitive fees with Olympic, but that may render its proposal financially unfeasible under WAC 246-310-220. The Program assumes that DaVita’s presence as a dialysis provider in Poulsbo will result in lower Olympic fees, but the evidence contradicts that assumption.

Split of the stations between the two applicants

2.10 A split of the stations between the two applicants with the issuance of two CONs is not fiscally prudent. The capital cost of establishing two facilities in addition to duplicative operating/managing expenses of two facilities when one facility could serve the need would render a split financially unreasonable. AR 330-332 and 10/6/04 RP at 71-72. The main purpose of the CON is to control health care cost, and avoid unnecessary duplication. RCW 70.38.015(2).

Patient choice analysis under WAC 246-310-240

2.11 In the case at hand, the Program's patient choice theory is too speculative. The evidence does not demonstrate that a significant number of patients would have a realistic choice because of the distance and commuting time between the facilities. In light of the evidence regarding Olympic's lower fees and projected lower fees, Olympic's projected lower annual operating budget and Olympic's reputation of providing good quality care, patient choice should not be used as a criteria to determine the "superior" or more "effective" applicant under WAC 246-310-240.

Rule making requirements under the Administrative Procedures Act (APA)

2.12 In some cases patient choice may be a reasonable criteria to evaluate CON application(s) under the scope of WAC 246-310-240(1) "superior alternatives, in terms of cost, efficiency or effectiveness, are not available or practicable." Patient choice between facilities that are not too far apart could stimulate more effective or efficient care, because patients could choose another facility if not satisfied with provided health care. This may result in facilities increased responsiveness to patient needs, therefore providing more "effective" and/or "efficient" care.

2.13 Olympic argues that the application of patient choice and/or price competition criteria to the CON application process violates the rule making requirements under the APA. Olympic argues that these criteria are not encompassed within the existing rules and therefore before choice/competition criteria are applied they must first be adopted as a rule. Because the patient choice criteria falls reasonably within the scope of WAC 246-310-240(1), the application of the choice factor does not

violate the rule making requirements of the APA. RCW 34.05.010. *Wash. Indep. Tel. Ass'n. v. Wash. Util. & Transp. Comm'n*, 148 Wn2d 887, 902 (2003) and *Hillis v. Dept of Ecology*, 131 Wn2d 373, 398-9 (1997). Patient Choice is not a new “qualification or requirement” related to the benefit conferred by the law since it reasonably falls under WAC 246-310-240 and the purpose of the Health Planning & Development Act to provide accessible, quality care, while controlling excessive health care costs. *Simpson Tacoma Kraft V. Dept. of Ecology*, 119 Wn.2d 640, 647-8 (1992) and RCW 70.38.015(1)(5).

2.14 The competition factor alone does not clearly fall under a reasonable interpretation of WAC 246-310-240. The legislature adopted the CON Act to control health care costs so government could restrain/control the marketplace forces, because the legislature was concerned that competition in health care has a tendency to drive costs up rather than down. *St Joseph Hospital* at 753. Therefore competition alone is a principle of “general applicability” that alters and/or creates a new qualification for the issuance of a CON. *Failor’s Pharmacy v. Department of Social & Health Services*, 125 Wn2d 488, 493-494 (1994), *Hillis* at 398-9 and *Simpson Tacoma Craft* at 647-8. Before this criteria is applied as the sole basis of granting or denying a CON, it should go through the scrutiny of public rule making procedure under the APA. *Id.*

2.15 The Program argues that the application of the competition criteria under WAC 246-310-240 cost containment analysis is permissible citing RCW 70.38.015(4): “The development of non-regulatory approaches to health care containment should be considered, including the strengthening of price competition.” In the case at hand, the

Program applied competition criteria pursuant to its regulatory interpretation of WAC 246-310-240. The Program is using a regulatory approach relying on a statute that authorizes a non regulatory approach.

2.16 Even without the application of the competition factor, Olympic is the “superior” and more “efficient” applicant under WAC 246-310-240 with a better projected budget, projected fees and a projected opening date. Because there was an immediate need for additional dialysis station and a facility in the Poulsbo area, the time factor should have been taken into consideration.

Comparative review

2.17 Mutually exclusive applications for proposed projects must be conducted concurrently when only one proposal will fulfill the identified need. *Ashbacker Radio Co. v Federal Communications Commission*, 326 US 327 (1945). Olympic’s and DaVita’s applications are mutually exclusive. Procedures regarding concurrent review are outlined in WAC 246-310-120 and RCW 70.38.115(7). The Program chose the comparative review process that is not set forth in the WAC, rather than concurrent review that is set forth in WAC 246-310-110. Olympic argues that the application of comparative review process violates the rule making requirements of the APA since this procedure is not contained in the CON rules.

2.18 WAC 246-310-110(1) limits the categories of review of “any” CON application. Comparative review is not listed in WAC 246-310-110(1). The word “shall” clearly states that choice of review procedures are limited to one of those procedures listed in WAC 246-310-110(1): “regular review, concurrent review, emergency review or

NOTICE TO PARTIES

Either Party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this Order with:

Adjudicative Service Unit
PO Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

Certificate of Need Program
PO Box 47852
Olympia, WA 98504-7852

The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration is considered denied 20 days after the petition is filed if the Adjudicative Service Unit has not responded to the petition or served written notice of the date by which action will be taken on the petition.

A petition for judicial review must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. RCW 34.05.470(3).

The order remains in effect even if a petition for reconsideration or petition for review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).