

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

In Re:

EVALUATION FOR THE CERTIFICATE  
OF NEED APPLICATION SUBMITTED BY  
VEST SEATTLE, LLC PROPOSING TO  
ESTABLISH A 75 BED PSYCHIATRIC  
HOSPITAL IN SNOHOMISH COUNTY,

BHC FAIRFAX HOSPITAL, INC., and  
UNIVERSAL HEALTH SERVICES, INC.,

Petitioner.

Master Case No. M2014-276

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND INITIAL ORDER

**APPEARANCES:**

Petitioner: BHC Fairfax Hospital, Inc., and  
Universal Health Systems, Inc. (BHC Fairfax), by  
Foster Pepper, PLLC, per  
Christopher Emch and Lori Nomura, Attorneys at Law

Intervenor: US HeathVest and Vest Seattle, LLC (HealthVest), by  
Lane Powell, PC, per  
Jonathon Bashford and Carin A. Marney, Attorneys at Law

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

**PRESIDING OFFICER:** Frank Lockhart, Health Law Judge

A hearing was held in this matter on October 13-14, 2014, regarding HealthVest's application for a Certificate of Need (CN) to establish a new 75-bed psychiatric hospital in Snohomish County. CN GRANTED with conditions.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND INITIAL ORDER

## **ISSUES**

Does HealthVest's application to establish a 75-bed psychiatric hospital in Snohomish County meet the relevant CN criteria in WAC 246-310-210, WAC 246-310-220, WAC 246-310-230, and WAC 246-310-240?

## **SUMMARY OF PROCEEDINGS**

At the hearing, HealthVest presented the testimony of Dr. Richard Kresch, President and CEO of US HealthVest; and Karen Nidermayer, CN Program analyst. BHC Fairfax presented the testimony of Frank Fox, Ph.D., CN consultant; and Ron Escarda, CEO of BHC Fairfax. The Program presented the testimony of Bart Eggen, Executive Director of DOH's Community Health Systems.

The Presiding Officer admitted the following exhibits as numbered:

Exhibit D-1: The Application Record, consisting of documents reviewed by the Program during the course of the application review.

Exhibit P-1: Curriculum Vitae of Dr. Frank Fox.

## **CITATIONS**

All citations to the Application Record herein are in footnote form, citing to the Bates Stamp page number, as in "AR 343." All citations to the transcript of the administrative hearing are cited to the page number, as in "TR 99."

### **I. PROCEDURAL HISTORY**

1.1 On May 21, 2013, HealthVest applied for a CN from the Program to establish a new 75-bed psychiatric hospital in Snohomish County.<sup>1</sup>

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<sup>1</sup> AR 2.

1.2 During the review process, BHC Fairfax applied for, and was granted, “affected person” status pursuant to WAC 246-310-010(2).

1.3 On January 14, 2014, the Program issued a letter to HealthVest indicating that it was prepared to issue a CN to HealthVest pursuant to certain conditions. On January 16, 2014, HealthVest sent a letter to the Program accepting those conditions. The Program awarded the CN to HealthVest on January 21, 2014.

1.4 On February 11, 2014, BHC Fairfax filed its Application for an Adjudicative Proceeding. HealthVest was granted intervenor status on March 20, 2014. The adjudicative hearing was held October 13-14, 2014. Pursuant to RCW 34.05.461(7), and by agreement of the parties, closing arguments were filed by brief.

## II. PROCEDURAL OBJECTIONS

(Many of BHC Fairfax’s objections to HealthVest’s CN award were allegations of procedural errors by either the Program or HealthVest. These procedural objections are therefore addressed first.)

2.1 In its initial application, HealthVest listed the anticipated location of its proposed hospital as Lynnwood, Washington. HealthVest had signed a letter of intent to purchase an existing building in Lynnwood containing approximately 70,400 square feet on 2.87 acres.<sup>2</sup> The capital expenditure budget for this location was \$23,200,000.<sup>3</sup> While the building was centrally located in the planning area, the building had more space than HealthVest needed and required extensive renovation.<sup>4</sup>

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<sup>2</sup> AR 18, 55.

<sup>3</sup> AR 13.

<sup>4</sup> AR 47, TR 56.

2.2 On June 12, 2013, the Program issued a Screening Letter<sup>5</sup> to HealthVest, which requested certain documents (zoning documentation, purchase documentation, etc.) related to the building purchase. HealthVest then encountered problems negotiating with the sellers of the property to obtain those documents, which caused HealthVest to secure an alternative site, approximately 24 miles away, in Marysville, Washington.<sup>6</sup> The Marysville land had water, sewer, and electric service, but no buildings, thus requiring HealthVest to build an entirely new hospital.<sup>7</sup> The revised capital expenditure budget for the new facility, however, was \$18,830,000, a savings of \$4,370,000 over the Lynnwood capital expenditure budget.<sup>8</sup> There were three reasons for this savings: First, the design for the new facility only needed 62,000 square feet<sup>9</sup> (over 8000 square feet less than the Lynnwood location); Second, the need for extensive renovation of the Lynnwood building was eliminated; and third, at the Program's request, HealthVest removed a "working capital" expense (basically a reserve fund) of almost four million dollars in the Marysville capital expenditure budget that had been included in the Lynnwood capital expenditure budget, but was more appropriate to the operating budget.<sup>10</sup> Because of the

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<sup>5</sup> AR 80. Screening letters are an integral part of the CN application process used by the Program to flesh out details of an applicant's proposal. WAC 246-310-090(2).

<sup>6</sup> TR 53-54, AR 297.

<sup>7</sup> TR 53-54.

<sup>8</sup> AR 95.

<sup>9</sup> AR 95, TR 56.

<sup>10</sup> AR 450, TR 57. HealthVest had originally included \$3,990,000 as "working capital" in their Lynnwood capital expenditure budget. In its June 12, 2013 screening letter, the Program pointed out this was not a capital expenditure under WAC 246-310-010(10). HealthVest thus appropriately removed that figure from its Marysville capital expenditure budget.

Marysville construction timeframe, the opening of the facility would be delayed by 12 months. However, all the psychiatric programs to be offered and the anticipated patient volume remained the same. With the zoning and purchase documents from the new Marysville site and with a new capital expenditure budget, HealthVest was able to respond to the Program's Screening Letter on August 16, 2013.

2.3 In addition, in its August 16, 2013 response letter, HealthVest invoked WAC 246-310-090(2)(c), and requested that the Program commence review of their application.

2.4 On August 20, 2013, the Program sent a letter to HealthVest, which acknowledged HealthVest's responses to its Screening Letter and notified HealthVest that the Program would commence review of their application. In that August 20, 2013 letter, the Program also asked three more screening questions.<sup>11</sup> HealthVest provided those supplemental responses on September 2, 2013. A public hearing was held on October 17, 2013. After the period of public comment ended, both HealthVest and BHC Fairfax submitted rebuttal documents. As indicated, the Program issued its evaluation in favor of HealthVest on January 14, 2014.

2.5 BHC Fairfax raises two procedural objections to the above. First, BHC Fairfax alleges that the change in location and operating budget were so extreme as to: render the application incomplete; or require a new application; or require an amended application. Second, BHC alleges that the Program should not have asked the second series of screening questions.

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<sup>11</sup> AR 177.

## Amended Applications

2.6 RCW 70.38.115(11) requires an amended CN application when an applicant proposes a new service, or an expansion of a service, or an increase in bed capacity.<sup>12</sup> None of these were proposed by HealthVest. In addition, WAC 246-310-100 grants the Program the discretion to deem a change in an application to be an amendment if: a service is eliminated or reduced; or if there is a change in the capital costs or method of financing; or if there is a change of project rationale; or if there is a change in the applicant. Of those discretionary factors, only the change in HealthVest's capital costs would qualify for consideration. However, the only change in the capital costs was the reduction of construction costs due to the smaller building, and the removal of the four million dollar "working capital" amount that should not have been included in capital expenditure budget in the first place. If the four million dollars had not been included in the original Lynnwood budget, the change in the Marysville budget would be less than 2 percent – an amount that the Program correctly determined did not justify an amended application. WAC 246-310-100(5) is clear that if an applicant changes an application during the screening process, it is up to the Program to determine whether the change constitutes an amended application. The Program was well within its discretion to determine that the reduction of capital costs due to (a) the Program's request to remove a reserve fund amount from the capital cost

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<sup>12</sup> Under WAC 246-310-570(f), a change in site location would have required an amended application if the CN had already been issued to HealthVest, but that is not the case here.

budget and (b) a savings in construction costs, did not constitute a material change in the capital cost budget.

2.7 The change in location was triggered by the Program's Screening Letter of June 12, 2014. Responses to screening questions are not considered amendments to applications. WAC 246-310-100(2). Given the nature of the changes, and when these changes occurred (prior to public comment), HealthVest was not required to amend its application because of the change in location, the justified reduction in capital costs, or the change in the project completion date.

#### Second Screening Questions

2.8 As indicated, after receiving HealthVest's request to begin the application review process, the Program sent HealthVest a letter asking three more screening questions. BHC Fairfax asserts that asking these additional questions was improper,<sup>13</sup> as if once an applicant requests that the review process begin, the Program is forbidden from asking additional questions. WAC 246-310-090(2)(a) clearly authorizes the Program to ask additional questions. There was no procedural violation here because there is no prohibition against the Program asking further questions.

#### No Procedural Due Process Violations

2.9 The question of whether the HealthVest's Marysville facility and HealthVest's budget projections satisfy the CN regulations is a different question than whether there was a procedural due process violation in how HealthVest's application was reviewed. The Presiding Officer has examined the Application Record, reviewed

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<sup>13</sup> Petitioner's Post-Hearing Opening Brief, pg. 8.

the testimony at hearing, and determines that no procedural due process violations occurred. We turn now to HealthVest's application.

### **III. FINDINGS OF FACT**

3.1 The legal name of the applicant is Vest Seattle, LLC, a wholly owned subsidiary of US HealthVest. HealthVest is led by the former management team of Ascend Health Corporation (Ascend). Ascend was established in 2005. Between 2005 and 2012, Ascend operated nine freestanding psychiatric facilities with over 800 beds in five states (Texas, Oregon, Utah, Arizona, and Washington) including Schick Shadel Hospital in Seattle. Of those nine hospitals, five were de novo start-up facilities.<sup>14</sup> Although this project is technically their first CN under the HealthVest name, the management team is experienced in establishing and operating psychiatric facilities.

3.2 HealthVest proposes to build a 75-bed psychiatric facility in Snohomish County to offer a full range of in-patient/out-patient psychiatric services including programs for adult psychiatric patients, military, women, dual-diagnosis (mental illness with drug/alcohol dependency), geriatrics, adolescents, and faith-based mental health and chemical dependency programs.<sup>15</sup> The threshold question for a new psychiatric facility is whether there is a need for additional psychiatric beds.

#### WAC 246-310-210 "Determination of Need"

3.3 Pursuant to WAC 246-310-210, an applicant for a CN must demonstrate a need for the proposed services. WAC 246-310 does not contain a psychiatric bed

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<sup>14</sup> AR 1, TR 34.

<sup>15</sup> AR 168-9.



forecasting method. However, both the State Health Plan (SHP) and RCW 70.38.115(5) allow for discretion for selecting and applying evaluation methods to determine need.<sup>16</sup> The current formula, and the one that both HealthVest and the Program used in this case, is to calculate need by comparing the number of existing (set up and available) psychiatric beds in the county against the goal of 27.25 beds per 100,000 persons.<sup>17</sup>

3.4 Using population growth forecasts from the Office of Financial Management and the above 27.25 bed-per-100,000-person formula, and subtracting the current supply of beds in the county, HealthVest posited a need for 136.3 beds by the year 2014 and 145 beds by 2018. Thus, HealthVest's application for 75 beds was well below the projected need for beds in the planning area. The Presiding Officer determines that there is numeric need for psychiatric beds in Snohomish County.

3.5 WAC 246-310-210(2) addresses the accessibility of the proposed health care services to the public.<sup>18</sup> Because this is HealthVest's first project in Washington, it does not have a track record in the state. As part of the application process, therefore,

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<sup>16</sup> Although the 1987 State Health Plan was "sunset" in 1989, the Program utilizes the concepts and definitions it contains as reliable tools for managing the growth of health care services. For example, the State Health Plan defines the planning area for psychiatric beds as the county in which the facility is located, and the Program uses the population figures from the entire county as the basis for calculating need.

<sup>17</sup> 27.25 psychiatric beds per 100,000 persons is the average of the Northwest states not including Washington. This formula was not in dispute in this case, and there were no public comments related to this formula. AR 454. However, for historical purposes, the Presiding Officer notes that the figure comes from the 2009 National Report Card on the State of Emergency Medicine (2009 National Report) and has come to be accepted by the Program and many parties as a reasonable goal for Washington.

<sup>18</sup> WAC 246-310-210(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."

HealthVest submitted a draft of its Charity Care Policy; a draft of its Admission Policy (indicating that patients would be admitted without regard to race, religion, ethnicity, sex, national origin, or ability to pay); and committed to maintain Medicare and Medicaid participation. The Program conditioned the CN award with the reasonable requirements that HealthVest submit final approved copies of its Admission and Charity Care Policies, approved by the Program, and that HealthVest match or exceed the percentage of charity care provided by other hospitals in the Puget Sound region (2.40 percent of gross revenue). HealthVest accepted these conditions.

3.6 Based on the Application Record and the testimony at hearing, the Presiding Officer finds that HealthVest fulfills the need determination criteria of WAC 246-310-210.

WAC 246-310-220 “Financial Feasibility”

3.7 Pursuant to WAC 246-310-220, an applicant for a CN must demonstrate that the project is financially feasible. Specifically, an applicant must demonstrate that the capital and operating costs can be met; that the costs of the project will probably not result in an unreasonable impact on the costs for health services; and that the project can be appropriately financed.

3.8 Healthvest proposes to have the Marysville location operational in 2016. HealthVest provided pro forma financial statements and supporting documents for the years 2016–2018, which project profitability by the second year of operation.<sup>19</sup> The estimated capital expenditure for the project is \$18,830,000, which would be entirely

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<sup>19</sup> AR 111.

funded by HealthVest's reserve funds. HealthVest provided its current balance sheet showing available funds to finance this project.<sup>20</sup>

3.9 The Presiding Officer determines that HealthVest has sufficient site control of the Marysville property, adequate funds to build the project, and sufficient experience to execute its budget. The assumptions underlying HealthVest's ability to fill psychiatric beds are reasonable.<sup>21</sup> There is nothing in the Application Record to suggest that HealthVest's project would have a unreasonable impact on the cost of health care in the planning area, nor was this issue raised at hearing.

3.10 Based on the Application Record 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"

3.11 The criteria for structure and process of care, spelled out in WAC 246-310-230, includes five areas that must be considered when reviewing a CN Application, to wit: adequate staffing, appropriate organizational structure and support, conformity with licensing requirements, continuity of health care, and the provision of safe and adequate care.

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<sup>20</sup> AR 75-6, AR 466.

<sup>21</sup> While psychiatric bed need was determined using population figures from within the county, the data shows heavy in-migration of patients for psychiatric services. One hundred percent of San Juan and Island County psychiatric patients seek treatment outside their counties, as do 54 percent of Skagit County psychiatric patients and 31 percent of Whatcom County psychiatric patients. AR 459. In addition, HealthVest would offer the only specialized program dedicated to military personnel in Washington State, which would draw patients from Pierce County. AR 460-1.

3.12 As a new corporation, HealthVest has no track record to demonstrate past compliance in this area. Thus, the only way HealthVest could show compliance to WAC 246-310-230 in its application was by indicating how it intended to proceed, e.g., by setting forth its recruitment strategy for staff, its job descriptions, its proposed ancillary and support services, and its intention to meet Medicare and Medicaid standards. This method of compliance, however, should not be held against HealthVest. Given that HealthVest's management team has five years of experience as the Ascend Health Corporation management team in opening and operating freestanding psychiatric facilities; given Ascend's history of successfully filling psychiatric beds in those states; and given Ascend's history of compliance with the standards set forth by the Joint Commission for the Accreditation of Hospitals in other hospitals it has operated, there are reasonable assurances that HealthVest will be compliant with the requirements of WAC 246-310-230. As a condition of granting the CN, the Program imposed certain conditions on HealthVest in this area, including the Program's required approval of all key employees and ancillary and support vendors.<sup>22</sup>

3.13 Based on the Application Record 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 conditions listed in the Program's letter of January 14, 2014, to HealthVest are reasonable.

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<sup>22</sup> AR 443, and 466-9.

### WAC 246-310-240 "Cost Containment"

3.14 The final criteria for analyzing the viability of a CN Application is a determination of cost containment, as described in WAC 246-310-240, which includes an analysis of whether there are superior alternatives to the proposed project in terms of cost, efficiency, or effectiveness.

3.15 In cases involving only one application, the applicant traditionally lists whatever other alternatives they considered and rejected. In this case, HealthVest had originally considered the three options of acquiring space in an acute care hospital, or building a new facility on raw land, or acquiring and converting an existing building into a freestanding psychiatric hospital. The first option was eliminated because there was no facility available. The second choice was originally eliminated because the cost and time involved. Thus, originally, acquiring and renovating the Lynnwood location was the superior choice. However, when the Lynnwood building ceased to be available at the same time the owner of the Marysville's property approached HealthVest with an offer of land that was already developed in terms of water, sewer, and electric service, the Marysville option became the superior option. While BHC Fairfax was critical of HealthVest for changing locations, the change on HealthVest's part was not premeditated, but was actually a commendable adaptation to circumstances.

3.16 HealthVest's pro forma budgets were analyzed under WAC 246-310-220 (financial feasibility) and found to be reasonable. The Presiding Officer thus finds that HealthVest fulfilled the criteria of WAC 246-310-240.

3.17 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 the fact that this is HealthVest's first hospital in Washington, the conditions set out by the Program in its January 14, 2014 letter to HealthVest are reasonable and should be imposed.

#### **IV. CONCLUSIONS OF LAW**

4.1 The Department of Health is authorized and directed to implement the CN Program. RCW 70.38.105(1). Establishment of a psychiatric hospital requires a CN. 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. The Admissible evidence in CN 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.

4.2 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) (citing to *DaVita*). 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.

4.3 In acting as the Department's decision maker, the Presiding Officer reviewed the application record. The Presiding Officer also reviewed the hearing

transcripts and the closing briefs submitted by the parties pursuant to RCW 34.05.461(7). The Presiding Office applied the standards found in WAC 246-310-200 through 246-310-240 in evaluating the application.

4.4 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.

4.5 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).

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

4.7 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.

4.8 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.

4.9 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:

4.10 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.

4.11 WAC 246-310-240 sets forth the "determination of cost containment" criteria to be used in evaluation 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.

4.12 Based on the above Findings of Fact, the Presiding Officer determines that HealthVest’s application meets the criteria for CN set forth in WAC 246-310-210, WAC 246-310-220, WAC 246-310-230, and WAC 246-310-240, and that the CN should be awarded to HealthVest. The Presiding Officer further finds the conditions that Program placed on HealthVest in its letter of January 14, 2014, to be reasonable and valuable.<sup>23</sup>

### III. ORDER

Based on the foregoing Procedural History and Findings of Fact, and Conclusions of Law, HealthVest’s CN application to establish a new 75-bed psychiatric hospital in Snohomish County is GRANTED subject to the conditions of the Program’s January 14, 2014 letter to HealthVest.

Dated this \_\_4\_\_ day of December, 2014.

\_\_\_\_\_/s/\_\_\_\_\_  
FRANK LOCKHART, Health Law Judge  
Presiding Officer

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<sup>23</sup> However, the Presiding Officer declines to impose a condition requested by BHC Fairfax (pg. 27, Closing Brief) to require HealthVest accept a “proportional share” of court-committed psychiatric patients. The Application Record lacks sufficient data to adequately address this complex social issue.

## NOTICE TO PARTIES

When signed by the presiding officer, this order shall be considered an initial order. RCW 18.130.095(4); Chapter 109, law of 2013 (Sec. 3); WAC 246-10-608.

Any party may file a written petition for administrative review of this initial order stating the specific grounds upon which exception is taken and the relief requested.

WAC 246-10-701(1). A petition for administrative review must be served upon the opposing party and filed with the Adjudicative Clerk Office within 21 days of service of the initial order. WAC 246-10-701(3).

“Filed” means actual receipt of the document by the Adjudicative Clerk Office. RCW 34.05.010(6). “Served” means the day the document was deposited in the United States mail. RCW 34.05.010(19). The petition for administrative review must be filed within 21 calendar days of service of the initial order with:

Adjudicative Clerk Office  
Adjudicative Service Unit  
P.O. Box 47879  
Olympia, WA 98504-7879

and a copy must be sent to the opposing party. If the opposing party is represented by counsel, the copy should be sent to the attorney. If sending a copy to the Assistant Attorney General in this case, the mailing address is:

Agriculture and Health Division  
Office of the Attorney General  
P.O. Box 40109  
Olympia, WA 98504-0109

**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 CFR 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:

<http://www.doh.wa.gov/PublicHealthandHealthcareProviders/HealthcareProfessionsandFacilities/Hearings.aspx>

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