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December 19, 2024

Alex Linde, CEO
Apex Spine Institute, PLLC
821 Swift Blvd.
Richland, WA 99352

Sent via email: alexl@apexspineinstitute.com
Cc: Lance Baldwin lance@m-exec.com

RE: Certificate of Need Application #24-22 – Department’s Evaluation and Decision

To all:

We have completed the review of the Certificate of Need application submitted by Apex Spine Institute, PLLC proposing CN-approval of a currently exempted three-operating room ambulatory surgical facility within the Benton-Franklin Health Services Planning Area. Attached is a written evaluation of the application.

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

Washington Administrative Code 246-310-210	Need
Washington Administrative Code 246-310-220	Financial Feasibility
Washington Administrative Code 246-310-230	Structure and Process of Care
Washington Administrative Code 246-310-240	Cost Containment
Washington Administrative Code 246-310-270	Ambulatory Surgery

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

Appeal Option 1:

You or any person with standing may request a public hearing to reconsider this decision. The request must state the specific reasons for reconsideration in accordance with the Washington Administrative Code 246-310-560. A reconsideration request must be received within 28 calendar days from the date of the decision at one of the following addresses:

Alex Linde
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Mailing Address:
Department of Health
Certificate of Need Program
Mail Stop 47852
Olympia, WA 98504-7852

Physical Address
Department of Health
Certificate of Need Program
111 Israel Road SE
Tumwater, WA 98501

Appeal Option 2:

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

Mailing Address:
Department of Health
Adjudicative Service Unit
Mail Stop 47879
Olympia, WA 98504-7879

Physical Address
Department of Health
Adjudicative Service Unit
111 Israel Road SE
Tumwater, WA 98501

If you have any questions or would like to arrange for a meeting to discuss our decision, please contact the Certificate of Need Program at (360) 236-2955.

Sincerely,



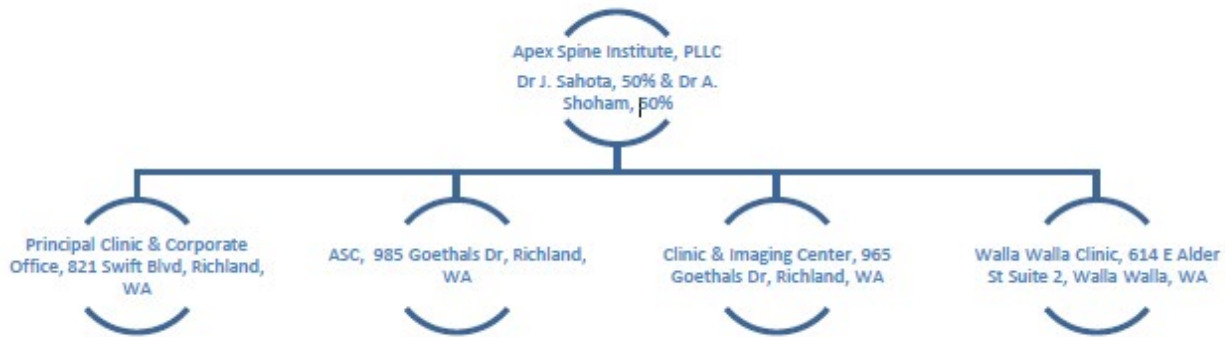
Ross Valore, Executive Director
Certificate of Need
Office of Community Health Systems

Attachment

EVALUATION DATED DECEMBER 19, 2024, FOR THE CERTIFICATE OF NEED APPLICATION SUBMITTED ON BEHALF OF APEX SPINE INSTITUTE, PLLC PROPOSING TO ESTABLISH AN AMBULATORY SURGERY CENTER LOCATED WITHIN THE BENTON COUNTY PLANNING AREA

APPLICANT DESCRIPTION

This application was submitted by the Washington State professional limited liability company known as Apex Spine Institute, PLLC.¹ The corporation was established in May 2022 and is governed by the following two individuals: Dr. Janmeet Sahota, DO, and Dr. Allen Shoham, MD, each holding a 50% ownership stake. The following organizational chart was provided during screening. [source: June 24, 2024, screening responses, p1]



The PLLC owns Apex Spine Institute, PLLC. The applicant for this project is Apex Spine Institute, PLCC, however, for brevity, the applicant will be referenced in this evaluation as ‘*Apex Spine*’ or ‘*the applicant*.’

PROJECT DESCRIPTION

Apex Spine Institute, ASC is owned and operated by Apex Spine Institute, PLLC and is a Certificate of Need exempt surgery center.² As a Certificate of Need exempt surgery center, use of the surgery center is limited to physician owners or employees of the practice.³ The surgery center has three operating rooms (ORs) and is located at 985 Goethals Drive in Richland [99352] within the Benton County planning area. Apex Spine Institute, PLLC has been operating its exempt surgery center at its current location in Richland since 2022.

This application proposes to convert the three OR certificate of need exempt ASC to a certificate of need approved ASC. [source: June 24, 2024, screening responses, p2] The reason to convert to a CN approved ASC is to allow surgeons outside the practice operate in the facility. This proposed change in operation is not allowed under the exemption, therefore this project requires prior Certificate of Need review and approval. No other changes to the surgery center are proposed.

¹ Unified Business Identifier (UBI) #604839169 [source: Washington State Secretary of State website and application].

² DOR 22-15, March 4, 2022

³ While other limitations are associated with Certificate of Need exempt surgery centers, the limit of physician use requirement is most pertinent to the applicant’s submission of this application.

There is no capital expenditure associated with this project. [source: Application, p14] If this project is approved, the applicant anticipates the surgery center will allow outside physician access to the surgery center within 30 days of Certificate of Need approval. Based on an anticipated approval date of September 1, 2024, the year 2024 is a partial year of operation as a CN approved facility, and the first full calendar year of operation is 2025 and year three is 2027.

APPLICABILITY OF CERTIFICATE OF NEED LAW

This application is subject to Certificate of Need review as the construction, establishment, or other development of a health care facility under RCW 70.38.105(4)(a) and WAC 246-310-020(1)(a).

EVALUATION CRITERIA

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

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

To obtain Certificate of Need approval, an applicant must demonstrate compliance with the criteria found in WAC 246-310-210 (need); 246-310-220 (financial feasibility); 246-310-230 (structure and process of care); 246-310-240 (cost containment). Additionally, WAC 246-310-270 (ambulatory surgery) contains service or facility specific criteria for ambulatory surgical facility (ASF) projects and must be used to make the required determinations for applicable criteria in WAC 246-310-210.

TYPE OF REVIEW

This application was reviewed under a regular review timeline. The table below shows a summary of the timeline used for the project.

APPLICATION CHRONOLOGY

Action	Apex Spine Institute, PLLC
Letter of Intent Received	January 3, 2024
Application Received	March 21, 2024
Department’s pre-review activities: <ul style="list-style-type: none"> • DOH 1st Screening Letter • Applicant’s 1st Screening Responses Received • DOH 2nd Screening Letter • DOH 2nd Screening Responses Received 	May 15, 2024 June 24, 2024 July 31, 2024 September 16, 2024
Beginning of Review	September 20, 2024
Public Hearing Conducted	N/A
Public Comments Deadline	October 25, 2024

Action	Apex Spine Institute, PLLC
Rebuttal Comments Deadline ⁴	November 8, 2024
Department’s Anticipated Decision	December 23, 2024
Department’s Actual Decision	December 19, 2024

PUBLIC COMMENT AND REBUTTAL

There were no public comments submitted for this application; as a result, the applicant did not provide rebuttal comments. This fact is stated here and will not be restated throughout this evaluation.

AFFECTED PERSONS

“Affected persons” are defined under WAC 246-310-010(2). To qualify as an affected person someone must first qualify as an “interested person” defined under WAC 246-310-010(34).

Health Trends

Health Trends is a business located in Seattle that supports health organizations, specializing in a variety of health economic and analytic services. On May 20, 2024, Health Trends staff submitted a request for interested person status. On its own, this entity does not qualify for interested person status and, therefore, cannot qualify for affected person status.

Kadlec Regional Medical Center

Kadlec Regional Medical Center is a CN-approved hospital serving the residents of Benton County. On February 1, 2024, this entity submitted a request for interested person status and requested to be informed of the department’s decision. Kadlec did not submit comments and, therefore, does not qualify as an affected person for this project.

For this project, no entities requested affected person status.

SOURCE INFORMATION REVIEWED

- Apex Spine Institute, PLLC’s Certificate of Need application received on March 21, 2024.
- Apex Spine Institute, PLLC’s first screening response received June 24, 2024.
- Apex Spine Institute, PLLC’s second screening response received on September 16, 2024.
- Compliance history for credentialed or licensed staff from the Medical Quality Assurance Commission and Nursing Quality Assurance Commission.
- Compliance history for facilities and services from the Washington State Department of Health – Office of Health Systems Oversight.
- DOH Provider Credential Search website: <http://www.doh.wa.gov/pcs>
- Historical charity care data for years 2020, 2021, and 2022 obtained from the Department of Health Hospital/Finance and Charity Care.
- Years 2020, 2021, and 2022 Annual Ambulatory Surgery Provider Surveys for surgical procedures performed during calendar years 2020, 2021, and 2022 for hospitals, ambulatory surgery centers, and ambulatory surgical facilities located in Benton-Franklin County.
- Office of Financial Management Growth Management act Population Projections for Counties 2020 to 2050, 2022 Projections.

⁴ There were no public comments submitted for this project; as a result, the applicant is precluded from submitting rebuttal comments.

- Department of Health internal database: Integrated Licensing & Regulatory Systems (ILRS)
- Washington State Secretary of State website: <https://sos.wa.gov>
- CMS QCOR compliance website: https://qcor.cms.gov/index_new.jsp
- Internet Quality Improvement and Evaluation System (iQIES)

CONCLUSION

Apex Spine Institute, PLLC

For the reasons stated in this evaluation, the application submitted by Apex Spine Institute, PLLC proposing to convert and exempt ASC to CN approved in Benton County; is not consistent with applicable criteria of the Certificate of Need Program and a Certificate of Need is denied.

CRITERIA DETERMINATIONS

A. NEED (WAC 246-310-210)

Based on the source information reviewed and agreement to the conditions identified in the conclusion section of this evaluation, the department concludes that the Apex Spine Care Institute, PLLC, project met the applicable need criteria in WAC 246-310-210 and the applicable ambulatory surgery facility criteria in WAC 246-310-270.

(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.

To evaluate this sub-criterion, the department uses facility-specific criteria found in WAC 246-310-270.

WAC 246-310-270(6)

WAC 246-310-270(6) requires a minimum of two operating rooms (ORs) in an ASF.

Apex Spine Institute, PLLC

The applicant stated that Spine Care Institute, ASC will have three ORs and provided line drawings for the facility. [source: Application p5, Exhibit 3, and June 24, 2024, screening responses, Exhibit 3]

Department Evaluation

The applicant provided documentation and statements to demonstrate the surgical facility will have a total of three ORs. **This sub-criterion is met.**

WAC 246-310-270(9) – Ambulatory Surgery Numeric Need Methodology

The Department of Health’s Certificate of Need Program uses the numeric methodology outlined in WAC 246-310-270 for determining the need for additional ASFs in Washington State. The numeric methodology provides a basis of comparison of existing operating room (OR) capacity for both outpatient and inpatient ORs in a planning area using the current utilization of existing providers. The methodology separates Washington State into 54 secondary health services planning areas. The exempt surgery center known as Apex Spine Institute is in the Benton County planning area.

The methodology estimates OR need in a planning area using multiple steps as defined in WAC 246-310-270(9). This methodology relies on a variety of assumptions and initially determines the existing surgical

capacity of dedicated outpatient and mixed-use operating rooms in the planning area, subtracts this capacity from the forecasted number of surgeries expected in the planning area in the target year, and examines the difference to determine:

- (a) Whether a surplus or shortage of ORs is anticipated to exist in the target year; and
- (b) If a shortage of ORs is predicted, the shortage of dedicated outpatient and mixed-use rooms is calculated.

Data used to make these projections specifically excludes special purpose and endoscopy rooms and procedures. Dedicated interventional pain management surgical services are also among the excluded rooms and procedures.

Apex Spine Institute, PLLC

Apex Spine Institute, PLLC provided several tables showing the factors it used for its Benton-Franklin planning area numeric methodology and provided a copy of the numeric methodology as applied to this project. The applicant’s numeric methodology projected a numeric need for 10.1 inpatient ORs in the Benton-Frankling planning area in the year 2027. [source: Application, p9]

Department Numeric Need Methodology and Evaluation

The numeric portion of the methodology requires a calculation of the annual capacity of the existing providers’ inpatient and outpatient ORs in a planning area. According to the department’s historical records, there are 14 planning area providers with OR capacity in east Benton County. Of the 14 providers, 3 are hospitals and 11 are ASFs.

Because there is no mandatory reporting requirement for utilization of ASFs or hospital ORs, the department sends an annual utilization survey to all hospitals and known ASFs in the state. For the review of this application, the most recent utilization survey data available was collected in the year 2023 and reflected year 2022 utilization. Therefore, this data will be used.

If a provider did not submit survey data in 2023, the department uses surveys submitted in one of the previous years, 2022 and 2021, whichever is the most recent. If a provider did not submit survey data in 2020, 2021, or 2022, the department relied on its internal data system known as the Integrated Licensing and Regulatory System (ILRS) for utilization data. Consistent with WAC 246-310-270(9)(a)(ii)⁵ the department uses the listed number of surgical procedures and multiplies that number by 50 minutes to approximate the total number of surgical minutes performed at the facility annually.

For hospitals, all known OR capacity and procedures are included in the methodology calculations for the planning area apart from special procedure room ORs dedicated to endoscopy, pain management, or other specialized dedicated services. The table below shows the four hospitals and the OR capacity of each. [source: ILRS database]

**Department’s Table 1
Benton-Franklin Health Services Planning Area Hospitals**

Hospitals	# of ORs	Type of OR
Kadlec Regional Medical Center	16	4 Special Procedure Rooms

⁵ If unknown, WAC 246-310-270(9)(a)(ii) identifies a default of 50 minutes per surgery.

		12 Mixed Use ORs
Trios Health	8	8 Mixed Use ORs
PMH Medical Center	3	3 Mixed Use ORs
Lourdes Medical Center	11	3 Special Procedure Rooms 8 Mixed Use ORs
Total Hospital ORs Counted:	38	

As shown in the table above, of the four hospitals located in the planning area, all have OR capacity. If a hospital does not have OR capacity it is not counted. The four hospitals have a combined total of 38 ORs, with 7 special procedure rooms and 31 mixed use ORs. The 31 mixed-use ORs will be counted in the numeric methodology.

The following table contains a listing of the 11 ASFs in Benton-Franklin Counties. [source: ILRS database]

**Department’s Table 2
Benton-Franklin County Health Services Planning Area
Ambulatory Surgical Facilities**

Ambulatory Surgical Facilities	City	Zip Code
Tri-City Regional Surgery Center	Richland	99352
High Desert Surgery Center	Kennewick	99336
Northwest Ambulatory Physicians	Richland	99352
Mid-Columbia Endoscopy Center	Kennewick	99336
Pacific Cataract and Laser Institute	Kennewick	99336
The Surgery Center at Tri-City Orthopedic Clinic	Kennewick	99336
Northwest Endovascular	Richland	99352
Kadlec Ambulatory Surgery Center – Spaulding Campus	Richland	99352
Kadlec Ambulatory Endoscopy Center – Lee Campus	Richland	99352
Gastro Health (Tri-Cities Endoscopy)	Kennewick	99336
Apex Spine ASC	Richland	99352

There are 11 ASFs operating in the Benton-Franklin planning area, and of those, five are CN exempt facilities and six are CN approved. For these six CN approved facilities, four are dedicated endoscopy⁶ ASCs and neither the ORs nor the cases are counted in the numeric methodology.

**Department’s Table 3
Benton-Franklin Health Services Planning Area
Ambulatory Surgical Facilities Excluded Based on Services and Access**

Ambulatory Surgical Facility	Exclusion Rationale
Northwest Ambulatory Physicians	Endoscopy only [source: CN #21-60 Evaluation]
Mid-Columbia Endoscopy Center	Endoscopy only [source: 2023 CN utilization survey]
Kadlec Ambulatory Surgery Center – Lee Campus	Endoscopy only [source: 2023 CN utilization survey]
Tri-Cities Endoscopy	Endoscopy only [source: 2021 CN utilization survey]

⁶ WAC 246-310-270(9)(iv).

For the remaining two CN approved ASFs, both the number of cases and the ORs are counted in the numeric methodology.

The remaining 5 ASFs are exempt from Certificate of Need review. This means the ASF is located within and owned by a solo or group practice, and the use of this surgical facility is restricted to physicians that are employees or members of the clinical practices that operate the facility. Surgical services are not the primary purpose of the facility. Therefore, these facilities do not meet the definition of an ASF.⁷ These exempt facilities’ cases, but not ORs, are included in the methodology for the planning area.

The data points used in the department’s numeric methodology are identified in the following table. The methodology and supporting data used by the department are provided in Appendix A of this evaluation.

**Department’s Table 4
The Department’s Benton-Franklin Health Services Planning Area
Methodology Assumptions and Data**

Assumption	Data Used	
Planning area	Benton-Franklin	
Population estimates and forecasts	Age Group: All ages OFM Population Projections 2022 Year 2022 – 314,682 Year 2027 – 336,072	
Use rate	139.29 /1,000 population	
Year 2022 total number of surgical cases in the planning area	Inpatient or mixed use	Outpatient
	20,339 cases	23,493 cases
	Total cases: 43,832	
Percent of surgeries: outpatient vs. inpatient (DOH survey)	46.4% inpatient	53.6% outpatient
Average minutes per case (DOH survey)	97.43 minutes	57.90 minutes
OR annual capacity in minutes (Per methodology in rule)	94,250 surgery minutes	68,850 surgery minutes
Existing providers/ORs (DOH survey and ILRS database)	31 inpatient and mixed-use ORs	9 dedicated outpatient ORs
Department’s Methodology Results	Surplus of 22.27 mixed use ORs in Benton-Franklin	

As noted in the table, the department’s numeric methodology calculates a surplus of 22.27 ORs in Benton-Franklin for projection year 2027. Although the project’s first full year is 2025, since the applicant used projection year 2027 in their application, the department used projection year 2027 as well for a better comparison. When comparing the applicant’s and department’s methodologies, there are several differences.

⁷ WAC 246-310-010(5) and WAC 246-330-010(5).

The applicant states that their application of the numeric methodology projects a shortage of 10.1 inpatient ORs. However, the department cannot confirm the assertion because the application does not include the worksheets created for the methodology.

The differences between the methodologies include:

- Differences in population data
- Differences in use rate
- Differences in percentages of outpatient and inpatient surgeries

Differences between the department's and applicant's methodologies change the result of the methodology; because of this, the department will use its own methodology for this review. In summary, numeric need for an ASF providing general surgical services is not demonstrated for Benton-Franklin planning area.

WAC 246-310-270(4)

WAC 246-310-270(4) gives the department some flexibility when the numeric methodology does not demonstrate numeric need for operating rooms. It states: “*Outpatient operating rooms should ordinarily not be approved in planning areas where the total number of operating rooms available for both inpatient and outpatient surgery exceeds the area need.*” The numeric need methodology projects a surplus of more than 15 ORs in Benton-Franklin counties. In response to this sub-criterion, the applicant provided extensive rationale for approval of this project, absent numeric need. Below is the rationale provided by the applicant. [source: Application, p10]

“To advocate for the approval of a Certificate of Need (CON) for additional outpatient operating rooms (ORs) in the Benton-Franklin Planning Area, it is crucial to address the specific healthcare needs intensified by the recent pandemic. The rationale for expanding outpatient OR capacity encompasses not only pre-existing needs but also those highlighted and exacerbated by the COVID-19 pandemic. This includes the backlog of elective surgeries delayed due to pandemic-related restrictions and a heightened focus on minimizing hospital stays to reduce infection risks. Please consider:

Backlog of Elective Surgeries: *The pandemic has significantly impacted the scheduling and completion of elective surgeries, creating a backlog as procedures were postponed to allocate resources to COVID-19 patients. This delay has increased the demand for outpatient surgeries, necessitating an expansion of outpatient OR capacity to address the accumulated needs efficiently.*

Shift Towards Outpatient Services: *The pandemic has accelerated the shift from inpatient to outpatient surgical care, driven by the necessity to reduce patient exposure to hospital environments and to optimize hospital resources. This shift underscores the need for additional outpatient ORs to accommodate the increased volume of surgeries being transitioned to outpatient settings. (A Positive Trend in Healthcare, see exhibit 9)*

Technological Advancements and Patient Preference: *The advancements in medical technology and surgical techniques have made it possible to perform a wider range of surgeries on an outpatient basis. Coupled with a patient preference for outpatient settings — due to convenience, lower cost, and perceived lower risk of COVID-19 exposure — there's a clear and growing demand for more dedicated outpatient ORs. (A Positive Trend in Healthcare, see Exhibit 9)*

Operational Efficiency and Cost-Effectiveness: *Freestanding ambulatory surgery centers (ASCs) have demonstrated greater efficiency and cost-effectiveness, especially important during and following the pandemic. Research shows up to a 43% savings for many orthopedic procedures. (See Exhibit 10). Expanding outpatient OR capacity supports a more sustainable healthcare system by providing cost-effective surgical care and alleviating the financial pressures on the overall healthcare system. Cost savings for performing procedures in an ASC equate to efficient quality care, convenience, and patient satisfaction. See*

Public Health Considerations: *Enhancing outpatient surgical capacity is also a public health imperative. The Benton and Franklin county's Community Health Improvement Plan (See Exhibit 8) Strategy 1.3.2 is to "Identify and promote services that mitigate barriers to access to healthcare services" By enabling more procedures to be done on an outpatient basis, it reduces the patient load on hospital-based systems, allowing them to better manage infectious disease outbreaks, improved access, and other emergencies.*

In conclusion, the expansion of outpatient OR capacity in the Benton-Franklin Planning Area is a critical step towards addressing not only the existing healthcare needs but also those highlighted by the recent pandemic. It aligns with the shifts in healthcare delivery preferences, the need for operational efficiency, and the overarching goal of improving public health outcomes. This expansion is supported by the broader trends in healthcare towards outpatient care, the imperative of addressing surgical backlogs, and the ongoing efforts to optimize healthcare resource utilization in the wake of the pandemic."

In addition to the information above, the applicant provided an article regarding utilization rates for the US population. The article details information for the year 2010 - 14 years ago. While it is pertinent in concept, the department expects the utilization rates to have changed in the last 14 years. As a result, while the information in the article is considered, the information is not presented in this evaluation.

An applicant must also demonstrate that existing services are not sufficiently available and accessible to meet that need. Apex Spine Institute, PLLC provided the following statements related to this sub-criterion. [source: June 24, 2024, screening response, pp3-4]

"Quantitative Need vs. Service Duplication

The need methodology highlights a shortage of outpatient operating suites based on current and projected demand for surgical services. This shortage indicates a gap in the availability of timely and accessible surgical care. While the numeric need justifies the addition of operating rooms, it is crucial to demonstrate that the anticipated patient volumes for the operating rooms will not overlap with those currently served by existing providers.

Distinct Patient Population

1. Specialized Services:

- **Spine Surgery Focus:** *The Apex Spine Institute specializes in orthopedic, spine-related, and pain management surgeries and procedures. This specialization caters to a patient demographic with specific needs that are not comprehensively addressed by general outpatient surgical centers. By focusing on specific care, the institute ensures that it attracts a distinct patient population requiring specialized care that existing facilities may not adequately provide.*

2. Referral Patterns:

- **Established Referral Network:** *The institute has developed a robust referral network with primary care physicians, orthopedic specialists, and other healthcare providers who recognize the specialized expertise in spine care. This network will continue to drive patient volumes to our operating suites, ensuring that the patient base is primarily composed of individuals specifically referred for our specialty.*

Anticipated Patient Volumes

1. Projected Growth:

- **Demographic Trends:** *The planning area is experiencing demographic shifts, including an aging population. The projected increase in the number of patients needing our specialty aligns with the anticipated patient volumes.*

Conclusion

The proposed addition of outpatient operating suites at the Apex Spine Institute is designed to address a specific and demonstrated need for specialized spine care within the planning area. By targeting a distinct patient population, improving geographical accessibility, leveraging an established referral network, and responding to demographic trends, the project ensures that it will not duplicate existing services. Instead, it will complement and enhance the overall healthcare infrastructure, providing necessary and timely care to patients who would otherwise face significant barriers to treatment.”

Department Evaluation

Apex Spine Institute, PLLC provided statements and data related to the availability and accessibility of other providers in the planning area. Further, the department did not receive any public comment to suggest that other area providers opposed the CN approval of this facility in the planning area.

In summary, the department previously concluded that the numeric methodology does not support the addition of ORs in the Benton-Franklin planning area. However, the applicant provided information to demonstrate that this project should be approved absent numeric need. The department concludes **this sub-criterion is met.**

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

To evaluate this sub-criterion, the department evaluates an applicant’s admission policies, willingness to serve Medicare and Medicaid patients, and to serve patients that cannot afford to pay for services. The admission policy provides the overall guiding principles of the facility as to the types of patients that are appropriate candidates to use the facility and assurances regarding access to treatment.

The admission policy must also include language to ensure all residents of the planning area would have access to the proposed services. This is accomplished by providing an admission policy that states patients would be admitted without regard to race, ethnicity, national origin, age, sex, pre-existing condition, physical, or mental status.

Medicare certification is a measure of an applicant's willingness to serve the elderly. With limited exceptions, Medicare is coverage for individuals aged 65 and over.

Medicaid certification is a measure of an applicant's willingness to serve low-income persons and may include individuals with disabilities.

Charity care shows the willingness of a provider to provide services to individuals who do not have private insurance, do not qualify for Medicare, do not qualify for Medicaid, or are under insured. With the passage of the Affordable Care Act, the amount of charity care is expected to decrease, but not disappear. Specific to ASFs, WAC 246-310-270(7) requires that ASFs shall implement policies to provide access to individuals unable to pay consistent with charity care levels reported by the hospitals affected by the proposed project.

Apex Spine Institute, PLLC

Apex Spine provided the following statements directly related to this sub-criterion:

"Apex Spine Institute is dedicated to meeting the requirements set by WAC 246-310-210(2) to ensure all residents of the service area, including low-income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly have adequate access to the proposed health services. Here's how we plan to uphold these commitments:

Comprehensive Policy and Procedure : Our policies are designed to ensure equitable access to our services. This includes implementing a non-discrimination policy, ensuring accessibility for individuals with disabilities, and offering financial assistance programs for those who qualify (See Exhibit 7)

Mission and Values : Our mission emphasizes health equity and access for all community members. Our values guide us in creating a welcoming and supportive environment for diverse populations, ensuring everyone receives high-quality care regardless of their background or circumstances.

Financial Assistance: We provide a clear and accessible financial assistance policy to help low-income patients afford the care they need. This policy is widely communicated to patients through various channels, ensuring they are aware of the support available. (See Exhibit 7)

Cultural and Language Services : Recognizing the diversity within our service area, we offer translation and interpretation services to patients who speak languages other than English and ensure our staff are trained in cultural competency.

Accessibility Enhancements : Our facility is designed to be fully accessible to individuals with disabilities, including those who use wheelchairs or have other mobility challenges. We continually assess and improve our physical infrastructure and healthcare delivery processes to enhance accessibility.

Feedback and Continuous Improvement: We actively seek feedback from our patients and community partners to understand how well we are meeting their needs and identify areas for improvement. This feedback informs our ongoing efforts to enhance access and equity in the services we provide.

By adhering to these strategies, Apex Spine Institute is committed to fulfilling the requirements of WAC 246-310-210(2), ensuring that our health services are accessible to all residents of our service area,

regardless of their economic status, ethnicity, gender, physical abilities, or age.” [source: Application, pp11-12]

The applicant provided copies of the following policies currently in use at the surgery center. [source: Application, Exhibit 7]

- Patient Rights
- Admission of Patient
- Charity Care for Patients

When asked in screening about a Non-Discrimination Policy, the applicant provided this clarification. [source: June 4, 2024, screening response, Exhibit 4]

“Apex Spine utilizes its Patients Rights and Responsibilities as its non-discrimination policy. Additional policies have been included to demonstrate Apex Spine’s commitment to non-discrimination. See Exhibit 4.”

Exhibit 4 states: *“Each patient has the right to receive quality care regardless of disability, race, creed, color, sex, national origin, or age on admission, treatment, or participation in its programs, services, and activities, or in employment.”*

When asked in screening about limiting the surgery center to patients ages 18 and older, Apex Spine Institute, PLLC provided the following clarification regarding the age range of patients to be served at the surgery center. [source: September 16, 2024, screening response, p1]

- **“Specialized Adult Care:** *Apex Spine's proposed surgery center is designed to meet the needs of adult patients (18 years and older). This aligns with the facility's current capabilities, equipment, and trained personnel who are specialized in treating adult populations. By limiting care to this age group, the center ensures that it can provide the highest standard of care within its scope of expertise.*
- **Safe and Appropriate Care:** *Pediatric care requires specialized equipment, staff, and protocols that Apex Spine currently does not possess. Offering care to patients outside of the 18+ demographic would present safety and quality concerns. Limiting the center's services to patients 18 and older ensures that the surgeries performed are within the scope of available resources, supporting patient safety and clinical outcomes.*
- **Recommendation Process:** *Although the center does not provide pediatric care, the clinic associated with Apex Spine has implemented a recommendation process that connects pediatric patients with appropriate specialists and facilities equipped to handle their specific needs. This ensures that no patient is left without access to necessary care, thereby supporting the accessibility requirement. Examples of recommendations, but not limited to:*
 - *The Providence Pediatric Specialty Clinic – Richland supports adolescent pain management*
 - *Shriners Children’s Tri-Cities Clinic: Kadlec Clinic Northwest Orthopaedic and Sports Medicine provides adolescent orthopaedic surgery.*
- **Access to Specialized Services:** *While the proposed facility is limited to adult patients, this does not result in a reduction of overall healthcare accessibility. Pediatric patients continue to have access to specialized pediatric providers through established recommendation networks, ensuring that their specific care needs are met by providers who have the appropriate capabilities and training.*

By focusing on adult patients and providing a safe, high-quality service to this population, Apex Spine is in alignment with the accessibility and availability standards of WAC 246-310-210(2), ensuring that all patients are directed to care that is safe, appropriate, and within the center's capabilities.”

In addition to the policies and statements above, the applicant provided the current and projected sources of revenue by payer and patient for Apex Spine Institute. The information is summarized in the table below. [source: Application, p16]

**Department’s Table 5
Apex Spine Institute, ASC Historical and Projected Payer Mix**

Payer	2022-2023 % by Revenue	2022-2023 % by Patient	Projected % by Revenue	Projected % by Patient
Medicare	15.7%	25.5%	15.3%	22%
Medicaid	0	0	.30%	3.5%
Other (commercial, HMO, & Self-Pay)	84.3%	74.5%	84.4%	74.5%
Total	100%	100%	100.0%	100.0%

During screening, the applicant provided assumptions for project payer mix. [source: September 16, 2024, screening response, p2]

- *“Historical Payer Mix: Apex Spine has been in operation since 2022. The historical data of payer sources (e.g., Medicare, Medicaid, Private Insurance, Self-Pay) over the past several years forms the baseline assumption for the payer mix. This includes an analysis of the proportion of revenue derived from each source, adjusted for anticipated changes in reimbursement rates or policy updates.*

While the payer mix for the application was projected on historical data, the following items can influence payer mix but were not utilized in the projection.

- *Reimbursement Rates: Projected revenue from different payers is calculated based on known reimbursement schedules for specific procedures performed at the center. For example, Medicare and Medicaid may reimburse at lower rates compared to private insurance, which affects the percentage of revenue attributable to these payers, even if patient volumes are higher in government payer categories. For the application, reimbursement rates were assumed to not change from year-to-year.*
- *Shifts in Population Demographics: If demographic shifts are anticipated in the service area (such as an aging population that increases Medicare enrollment), this will influence projections in revenue percentage. Conversely, younger populations may increase the proportion of private insurance payers. For the application, while historical data shows a growth year-to-year in the population, no demographic changes were incorporated in the payer mix.*
- *Procedure Complexity and Insurance Coverage: More complex or specialized surgeries typically yield higher reimbursement rates and may be covered more comprehensively by certain payers, such as private insurance or Medicare. The complexity of the procedures performed by Apex Spine is factored into revenue projections. For the application, surgical mix is assumed to be consistent.*

- *Referral Patterns and Case Mix: Historical data on referrals and the types of surgeries performed (such as high-revenue versus low-revenue procedures) help estimate future payer mixes. For example, if the center anticipates performing more high-revenue surgeries (like spinal fusions), the percentage of revenue from private insurers may be projected to increase. For the application, surgical mix is assumed to be consistent.*

Assumptions for Projected Percent by Payer:

- *Historical Patient Volume: Apex Spine has been in service since 2022. The proportion of patients covered by each payer in previous years is used to estimate future patient volumes by payer. This considers the typical patient demographics served by Apex Spine. Apex Spine used the estimated population growth to identify patient volume growth.*

While the patient mix for the application was projected on historical data, the following items can influence patient mix but were not utilized in the projection.

- *Market Trends: National and regional trends in insurance enrollment, such as shifts from employer sponsored insurance to government payers (due to changes in employment or policy), influence projections. Additionally, market shifts, like an increase in high-deductible plans, may impact the volume of self-pay patients. For the application, market trends were not incorporated in the patient mix.*
- *Service Area Demographics: Patient demographics in the service area, including income levels and access to employer-sponsored insurance, are key factors. If the service area includes a higher proportion of low-income individuals, Medicaid patients may make up a larger share of total patients. For the application, demographics were not incorporated in the patient mix calculations.*
- *Referral Relationships: The payer mix of referral sources (such as primary care providers or specialists) influences projections. If a high volume of patients are referred by providers serving Medicare or Medicaid populations, this affects the projected percentage of patients by payer. For the application, referral relationships were not utilized.*

These assumptions are derived from a combination of historical data and population growth analysis to ensure that the projected payer mix reflects the most accurate and realistic outlook for Apex Spine’s future operations.”

Department Evaluation

As previously stated, Apex Spine Institute, ASC is currently operational, and all policies are currently in use. Each of the policies provides the necessary information specific to the purpose of the policy.

The surgery center is both Medicare and Medicaid certified and holds an active Washington State license. The information is below.

Medicare Certification
1053418137

Medicaid Certification
1245987965

To ensure the surgical facility would be available to all residents of the service area, if this project is approved, the department would condition the approval requiring the applicant to maintain both Medicare and Medicaid certification.

Based on this information, the department concludes that approval of this project has the potential to increase, or maintain, the availability and accessibility of pain management and orthopedic services to the Medicare and Medicaid populations of Benton-Franklin County.

Based on the information reviewed and with Apex Spine Institute, PLLC’s agreement to the conditions identified above, the department concludes **this sub-criterion is met.**

WAC 246-310-270(7) – Charity Care Requirement

WAC 246-310-270(7) requires that ASFs implement policies to provide access to individuals who are unable to pay. The policies should allow the surgery center to offer charity care consistent with charity care levels reported by the hospitals affected by the proposed ASF.

Apex Spine Institute, PLLC

Apex Spine Institute, PLLC provided the following summary of the planning area’s current charity care rates. [source: Application, p13]

Applicant’s Table

Planning Area Hospital 3-year Average Charity Care as a Percentage of Total Revenue	1.38%
Projected Facility Charity Care as a Percentage of Total Revenue	1.5%

Within the application, Apex Spine Institute, PLLC stated that the projected facility charity care 1.5% of gross charges.

Apex Spine Institute, PLLC provided clarification regarding assumptions for charity care. [source: September 16, 2024, screening responses, p5]

“Apex Spine has not historically documented charity care that it has provided. The organization will provide and record charity care of 1.5% of facility total revenue in compliance with the rule that it exceed the average charity of hospitals in the planning area. The following table [TABLE OMITTED] was obtained from the annual charity care reports provided by the Washington Department of Health. 1.38% is the average of the hospitals in the planning area.”

Department Evaluation – Charity Care Requirement

For charity care reporting purposes, Washington State is divided into five regions: King County, Puget Sound (less King County), Southwest, Central, and Eastern. For this review, the department focuses on the years 2020, 2021, and 2022 charity care data reported by the hospitals in the Central Washington region, as these were the three most recent reports available at the time the application was submitted.

Currently there are four hospitals operating within the Benton-Franklin County planning area. The following table compares the three-year historical average of charity care provided by the hospitals operating in the Central Washington Region, the four licensed hospitals in the Benton-Franklin planning area, and the applicants’ projected charity care percentages. [source: Department of Health’s charity care reports for years 2020, 2021, and 2022 and Application, Exhibit 1]

**Department’s Table 6
Charity Care – Three Year Average**

	% of Total Revenue	% of Adjusted Revenue
Central Washington Region Total	1.41%	4.12%
Four Hospitals Combined	1.43%	3.72%
Apex Spine Institute, PLLC	1.5 %	Not Provided

As shown above, the projected percentage of charity care by the applicant is more than the regional average and higher than the average of the four hospitals combined for percent of total revenue. Because the applicant did not provide charity care projections based on adjusted revenue, the department recalculated the charity care dollars to be provided at Apex Spine Institute, PLLC ensure they will be consistent with the charity care percentage of adjusted revenues for the hospitals in the Benton-Franklin planning area. [source: Application, Exhibit 1]

**Department’s Table 7
Charity Care – Three Year Average Comparison**

	Adjusted Revenue ⁸	Apex Spine Institute PLLC Projected Charity Care	Four Hospitals Combined Average = 3.72%
Year 1 – 2025	\$8,378,724	\$125,681	\$311,689
Year 2 – 2026	\$8,596,571	\$128,949	\$319,792
Year 3 - 2027	\$8,820,082	\$132,301	\$328,107

When comparing the applicant’s projected charity care dollars with the regional and planning area projections shown above, the increased amounts would minimally affect the net profits of the surgery center. Taking this into account, the department will also apply the increased charity care dollar amounts to the financial feasibility criteria in WAC 246-310-220(1) of this evaluation.

Approval of this project would require Apex Spine Institute, PLLC to acknowledge the requirement under WAC 246-310-270(7) to provide charity care. **With agreement to a charity care condition, this sub-criterion is met.**

(3) The applicant has substantiated any of the following special needs and circumstances the proposed project is to serve.

(a) The special needs and circumstances of entities such as medical and other health professions schools, multidisciplinary clinics and specialty centers providing a substantial portion of their

⁸ WAC 246-310-270(7)

services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas.

(b) The special needs and circumstances of biomedical and behavioral research projects designed to meet a national need and for which local conditions offer special advantages.

(c) The special needs and circumstances of osteopathic hospitals and non-allopathic services.

(4) The project will not have an adverse effect on health professional schools and training programs. The assessment of the conformance of a project with this criterion shall include consideration of:

(a) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

(b) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools serving the area will have access to the services for training purposes.

(5) The project is needed to meet the special needs and circumstances of enrolled members or reasonably anticipated new members of a health maintenance organization or proposed health maintenance organization and the services proposed are not available from nonhealth maintenance organization providers or other health maintenance organizations in a reasonable and cost-effective manner consistent with the basic method of operation of the health maintenance organization or proposed health maintenance organization.

Department Evaluation

WAC 246-310-210(3), (4), and (5) do not apply to this project under review.

B. FINANCIAL FEASIBILITY (WAC 246-310-220)

Based on the source information reviewed and agreement to the conditions identified in the conclusion section of this evaluation, the department concludes that Apex Spine Institute, PLLC **has not met** the applicable financial feasibility criteria in WAC 246-310-220.

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

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

To evaluate this sub-criterion, the department reviews the assumptions provided by an applicant, projected revenue and expense (income) statements, and projected balance sheets. The assumptions are the foundation for the projected statements. The income statement is a financial statement that reports a company's financial performance over a specific period—either historical or projected. Projected financial performance is assessed by giving a summary of how the business expects its revenues to cover its expenses for both operating and non-operating activities. It also projects the net profit or loss incurred over a specific accounting period.

The purpose of the balance sheet is to review the financial status of a company at a specific point in time. The balance sheet shows what the company owns (assets) and how much it owes (liabilities), as well as the amount invested in the business (equity). This information is more valuable when the balance sheets for several consecutive periods are grouped together, so that trends in the different line items can be viewed.

As a part of its review, the department must determine that a project is financially feasible – not just as a stand-alone entity, but also as an addition to its own existing operations, if applicable. To complete its review, the department may request an applicant to provide projected financial information for the parent corporation if the proposed agency would be operated under the parent.

Apex Spine Institute, PLLC

Apex Spine Institute, PLLC is currently operational under a CN exemption. Based on the CN Program’s rules, this project is reviewed as the establishment of a new healthcare facility. Given that the surgery center has been operational since 2022, the applicant relied on historical data in specific sections.

In screening, the applicant provided their historical and projected surgery volume for the years 2022 through 2027. [source: September 16, 2024, screening responses p4]

Applicant’s Table [recreated]

	Market Share	2022	2023	2024	2025	2026	2027
Pain Management		950	1548	1584	1625	1,667	1,710
Surgical Minutes	22	20,900	34,056	34,840	35,746	36,675	37,629
WAC Projected Turnover Time (25% of Surgery time)	5.5	14,250	23,220	23,754	24,372	25,006	25,656
Total Time	28	35,150	57,276	58,594	60,118	61,681	63,285
Orthopedic		317	510	528	542	556	570
Surgical Minutes	63	19,971	32,130	33,256	34,121	35,008	35,918
WAC Projected Turnover Time (25% of Surgery time)	16	7,925	12,750	13,197	13,540	13,892	14,253
Total Time	79	27,896	44,880	46,453	47,661	48,900	50,171
Total Minutes		63,046	102,156	105,047	107,779	110,581	113,456
OR Need	-	0.9	1.48	1.53	1.57	1.61	1.65
WAC Total Surgery Time	68,850	68,850	68,850	68,850	68,850	68,850	68,850

Given that the surgery center is currently operational and received exemption in 2022, Apex Spine Institute, PLLC provided the historical payer mix for 2022-2023 for the facility and stated the projected payer mix. The historical and project payer mix percentages are provided in the table below. [source: Application, p16]

**Department’s Table 8
Apex Spine Institute, PLLC
Historical and Projected Payer Mix**

Payer	2022-2023 % by Revenue	2022-2023 % by Patient	Project % by Revenue	Projected % by Patient
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Medicare	15.7%	25.5%	15.3%	22%
Medicaid	0%	0%	.03%	3.5%
Commercial Payer	84.3%	74.5%	84%	74.5%
Total	100.0%	100.0%	100.0%	100.0%

Apex Spine Institute, PLLC provided an updated Pro Forma and Balance Sheets in screening and provided the following description of the assumptions used to develop them. [source: September 16, 2024, screening responses, pp6-7]

“The following items show growth or change in the pro forma because of their relationship to growth in production:

Applicant’s Table (recreated)

	2022	2023	2024	2025	2026	2027	Notes
Refunds	\$355	\$23,830	\$24,450	\$25,085	\$25,738	\$26,407	Not inflation - grows in relation to production at a rate of 2.6%/year (previous year X 102.6% = next year)
Bad Debts	\$6,429	\$52,896	\$54,115	\$55,522	\$56,965	\$58,447	Not inflation - grows in relation to production at a rate of 2.6%/year (previous year X 102.6% = next year)
5004 COGS-Implants	\$291,864	\$567,846	\$582,610	\$597,758	\$613,300	\$629,245	Not inflation - grows in relation to production at a rate of 2.6%/year (previous year X 102.6% = next year)
6010 Salaries/Wages Paid	\$301,683	\$1,620,634	\$1,749,830	\$1,749,830	\$1,749,830	\$1,749,830	Not inflation - increase in FTE
6271 Medical Supplies	\$33,669	\$281,060	\$288,368	\$295,865	\$303,558	\$311,450	Not inflation - grows in relation to production at a rate of 2.6%/year (previous year X 102.6% = next year)

Refunds, bad debt, cost of goods, and medical supplies can fluctuate based on population trends, changes in demographics, inflation, referral patterns, case mix, payer mix, etc. For example, a shift in the ratio of pain management to spine procedures would result in increased costs of good. To allow for accurate calculations throughout the pro forma the application, these items grew by 2.6% on a year-to-year basis in parallel with the population and production growth.

Salaries and wages paid are tied to the increase in FTE identified to accompany the growth in organization.”

Apex Spine Institute, PLLC provided historical and projected volumes, revenue, expenses, and net income for the ASC. Based on the preceding assumptions, the following table shows the projected revenue, expenses, and net income of the ASC, showing a steady increase of net profit each year. [source: June 24, 2024, screening responses, Exhibit 1]

**Department’s Table 9
Apex Spine Institute, PLLC
Projected Revenue, and Expenses**

	2025 Year 1	2026 Year 2	2027 Year 3
Net Revenue	\$4,410,134	\$4,524,797	\$4,642,442
Total Expenses	\$3,644,210	\$3,651,903	\$3,659,795

Net Profit/(Loss)	\$765,924	\$872,894	\$982,647
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Within the application, Apex Spine Institute, PLLC provided a copy of the executed lease agreement for the site at 985 Goethals Drive in Richland [99352] to demonstrate site control. [source: Application, Exhibit 2]. The initial lease was executed April 19, 2022, for an initial term of ten years. Since the applicant will continue leasing the site, lease costs were included in pro forma revenue and expense statement.

Given that the medical director is an employee/owner and is not separately compensated for the services, no medical director's cost is included in financial statements. However, Apex Spine Institute, PLLC provided a job description for the medical director. [source: September 16, 2024, screening responses, pp13-15]

During screening, Apex Spine Institute, PLLC provided balance sheets for the surgery center and the whole organization. The balance sheets provide historical and projected finances for the years 2022-2027. The information is summarized in the tables below. [source: September 16, 2024, screening response, pp11-12]

**Department's Table 10
Apex Spine Institute, PLLC
ASC Balance Sheets for Years 2022 through 2027**

Assets	2022	2023	2024	2025	2026	2027
Total Current Assets	\$22,300	\$220,452	\$210,708	\$203,181	\$231,558	\$260,672
Total Fixed Assets	\$53,245	\$789,418	\$754,524	\$727,570	\$829,185	\$933,441
Total Assets	\$75,545	\$1,009,870	\$965,232	\$930,751	\$1,060,742	\$1,194,113
Liabilities	2022	2023	2024	2025	2026	2027
Total Current Liabilities	\$4,705	\$117,779	\$112,573	\$108,552	\$123,713	\$139,267
Total Long-Term Liabilities	\$33,828	\$178,363	\$122,914	\$92,405	\$83,150	\$74,053
Total Liabilities	\$38,534	\$296,142	\$235,488	\$200,957	\$206,863	\$213,320
Total Equity	\$37,012	\$713,728	\$729,744	\$729,794	\$853,879	\$980,793
Total Liabilities & Equity	\$75,545	\$1,009,870	\$965,232	\$930,751	\$1,060,742	\$1,194,113

**Department's Table 11
Apex Spine Institute, PLLC
Whole Organization
Balance Sheets for Years 2022 through 2027**

Assets	2022	2023	2024	2025	2026	2027
Total Current Assets	\$355,683	\$489,256	\$489,256	\$489,256	\$489,256	\$489,256
Total Fixed Assets	\$1,133,543	\$1,591,786	\$1,591,786	\$1,591,786	\$1,591,786	\$1,591,786
Total Assets	\$1,489,225	\$2,081,042	\$2,081,042	\$2,081,042	\$2,081,042	\$2,081,042
Liabilities	2022	2023	2024	2025	2026	2027
Total Current Liabilities	\$100,170	\$237,490	\$237,490	\$237,490	\$237,490	\$237,490
Total Long-Term Liabilities	\$720,179	\$359,652	\$259,308	\$202,165	\$159,624	\$126,280
Total Liabilities	\$820,349	\$597,142	\$496,798	\$439,656	\$397,115	\$363,771
Total Equity	\$668,876	\$1,483,900	\$1,584,244	\$1,641,387	\$1,683,927	\$1,717,271
Total Liabilities & Equity	\$1,489,225	\$2,081,042	\$2,081,042	\$2,081,042	\$2,081,042	\$2,081,042

While reviewing screening materials, the department discovered discrepancies between the ASC balance sheet provided by the applicant and the review aid used to verify the information. Specifically, the department observed that the applicant’s calculated Total Assets for the ASC did not equal the sum of the individual assets for each year of the projections, and the applicant’s sum of Total Liabilities and Equity for the ASC did not equal the sum of the individual items. In addition, the sum of Total Liabilities and Equity for the organization as a whole does not match the sum if its individual values. As a result, the correctly calculated values are significantly different than those presented by the applicant and each year is out of balance when the displayed items are added. When asked to clarify the differences, no new information was provided. Summarized below, is the ASC balance sheet totals from the department.

Department’s Table 12
Apex Spine Institute, PLLC
Department’s ASC Balance Sheets for Years 2022 through 2027

Assets	2022	2023	2024	2025	2026	2027
Total Current Assets	\$11,114	\$264,823	\$253,118	\$244,076	\$278,164	\$313,138
Total Fixed Assets	\$53,245	\$789,4118	\$754,524	\$727,570	\$829,185	\$933,441
Total Assets	\$69,952	\$1,032,056	\$986,437	\$951,198	\$1,084,046	\$1,220,346
Liabilities	2022	2023	2024	2025	2026	2027
Total Current Liabilities	\$4,705	\$117,790	\$112,574	\$108,552	\$123,713	\$139,268
Total Long-Term Liabilities	\$33,828	\$178,363	\$122,914	\$92,405	\$83,150	\$74,053
Total Liabilities	\$38,553	\$296,142	\$235,488	\$200,957	\$206,863	\$213,321
Total Equity	\$37,012	\$713,729	\$729,744	\$729,794	\$853,880	\$980,793
Total Liabilities & Equity	\$75,545	\$1,009,871	\$965,232	\$930,751	\$1,060,743	\$1,194,114

Department Evaluation

To evaluate this sub-criterion, the department first reviewed the assumptions used by Apex Spine Institute, PLLC to determine the projected number of procedures and utilization of the ASC. The utilization assumptions are based on the historical number of procedures performed in the facility as well as anticipated projection growth.

Apex Spine Institute, PLLC based its revenue and expense assumptions on historical figures or contracts currently in place at its clinical operations. Some categories were held constant, and others were estimated as a percent of anticipated revenue, this approach is reasonable.

The pro forma financial statements show revenues would cover expenses beginning in full year one (2025) through full calendar year three (2027), showing a steady increase in net income each year. However, the department asked six questions in screening (#14-16 in first screening and #15-17 in second screening) to allow the applicant to correct discrepancies on the balance sheets. Apex Spine Institute had an opportunity to provide a corrected balance sheet during screening and chose not to provide it or explain the discrepancies between the applicant and department’s balance sheets. For these reasons, an unresolved issue will not be declared in this project. The balance sheets contain unexplained errors, and the department is not able to conclude that they are reliable. Based on this information, the department concludes that it cannot evaluate this project’s financial feasibility using the information provided in the application and screening responses.

Based on the information submitted, the department concludes that the immediate and long-range operating costs of the project can be met. If this project is approved, the department would attach a charity care condition consistent with past surgical center projects. **This sub-criterion is not met.**

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

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

Department Evaluation

There is no capital expenditure associated with this project. **This sub-criterion does not apply.**

(3) The project can be appropriately financed.

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

Department Evaluation

There is no capital expenditure associated with this project. **This sub-criterion does not apply.**

C. STRUCTURE AND PROCESS (QUALITY) OF CARE (WAC 246-310-230)

Based on the source information reviewed and agreement to the conditions identified in the conclusion section of this evaluation, the department concludes that Apex Spine Institute, PLLC meets the applicable structure and process (quality) of care criteria in WAC 246-310-230.

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

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

Apex Spine Institute, PLLC

Apex Spine Institute, PLLC provided its projected number of full-time equivalents (FTEs) for the surgery center. A summary of the information is shown in the table below. [source: June 24, 2024, screening responses, p4]

**Department's Table 12
Apex Spine Institute, PLLC
Projected FTEs for Partial Year One and Full Calendar Years 2025 through 2027**

FTE Type	2024 Partial Year 1	2024 Full Year 1	2025 Full Year 2	2026 Full Year 3
Administrator	1	1	1	1
RNs	16	17	17	17
Surgical Technicians	5	6	6	6
Receptionist	2	2	2	2
Total	24	26	26	26

Focusing on recruitment and retention of staff, Apex Spine Institute, PLLC provided the following information. [source: Application, p20]

“Recruitment

Targeted Advertising: Use of specialized job boards, social media platforms, and professional networks to reach potential candidates with the desired skills and experience in orthopedic and pain management care and related fields.

Employee Referral Programs: Encouraging current employees to refer qualified candidates by offering incentives, recognizing that referrals often result in hires who fit well with the organization's culture and have higher retention rates.

Competitive Compensation and Benefits Packages: Offering attractive salary packages, health benefits, retirement plans, and other perks to stand out in the competitive healthcare job market.

Retention

Professional Development and Career Advancement: Providing ongoing education, training programs, and opportunities for professional growth to help staff enhance their skills and advance their careers within the organization.

Recognition and Reward Systems: Programs to recognize and reward employees for their contributions, hard work, and dedication, which can boost morale and job satisfaction.

Flexible Work Arrangements: Offering flexible scheduling options, part-time positions, and telecommuting opportunities where feasible to help staff balance work and personal commitments.

Creating a Positive Work Environment: Fostering a supportive and inclusive culture that values teamwork, communication, and mutual respect, making employees feel valued and engaged.

Open Communication Channels: Encouraging open and transparent communication between staff and management to discuss concerns, feedback, and suggestions, ensuring employees feel heard and involved in decision-making.

By employing these recruitment and retention strategies, Apex Spine Institute has built a dedicated and skilled workforce committed to providing high-quality care and contributing to the institute's success.”

The physician owner, Allen Shoham, MD, is the current medical director and will continue providing these services if this project is approved. A summary of the medical director’s job description was provided in screening. [source: September 16, 2024, screening responses, pp13-15]

Department Evaluation

As previously stated, the surgery center is currently operational. While Apex Spine Institute, PLLC provided information regarding recruitment and retention of staff, as shown in the table above, the surgery center is currently fully staffed with 24 FTEs and expects an increase of 2 FTEs in staff. The department

concludes that Apex Spine Institute, PLLC's proposed staffing is reasonable. The department further concludes that the applicant is likely to be able to recruit and retain staff if needed.

Given that the medical director of the facility is the physician owner, the medical director is already in place.

The information provided in the application demonstrates that the applicant is likely to be able to staff the surgery center. Based on the information above, the department concludes that the project **meets this sub-criterion**.

(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.

Chapter 246-310 WAC does not contain specific WAC 246-310-230(2) as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs what relationships, ancillary and support services should be for a project of this type and size. Therefore, using its experience and expertise the department assessed the materials contained in the application.

Apex Spine Institute, PLLC

Given that the surgery center has been operational for many years, the applicant provided a listing of ancillary and support services that have been established for the surgery center. [source: September 16, 2024, screening responses, p6]

- Medical Equipment Suppliers – Medline, Cardinal Health, Henry Schein
- Pharmaceuticals – Cardinal Health, McKesson Corporation, Besse
- Sterilization Services – Steris Corporation
- Medical Waste Disposal – Stericycle
- Medical Billing Services – MedData
- Facility Maintenance & Cleaning – ABM Industries, ServiceMaster Clean
- Laboratory Services – LabCorp, Interpath Laboratory

Apex Spine Institute, PLLC has a current transfer agreement with Lourdes Medical Center. The signed agreement between Apex Spine Institute and Lourdes Medical Center was provided in Exhibit 4 of the application.

Department Evaluation

Apex Spine Institute, PLLC provided documentation to demonstrate compliance with this sub-criterion. Specific to the transfer agreement, CMS 416.41(b)3 requires Medicare-certified ASCs to either have a written transfer agreement with a hospital that meets the requirements of 416.41(b)(3)(i), OR ensure that all physicians performing surgery in the ASC have admitting privileges at a hospital that meets the requirements of 416.41(b)(3)(ii). The patient transfer agreement provided in the application meets this criterion.

Based on the information reviewed in the application, the department concludes that there is reasonable assurance that Apex Spine Institute will obtain and maintain the necessary relationships with ancillary and support services for the surgery center if this project is approved. **This sub-criterion is met.**

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

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

As a part of this review, the department must conclude that the proposed services provided by an applicant would be provided in a manner that ensures safe and adequate care to the public.⁹ For surgery centers, the department reviews two different areas when evaluating this sub-criterion. One is a review of the Centers for Medicare and Medicaid Services (CMS) "Terminated Provider Counts Report" covering years 2021 through 2024. The department uses this report to identify surgery centers that were involuntarily terminated from participation in Medicare reimbursement.

The department also reviews an applicant's conformance with Medicare and Medicaid standards, with a focus on Washington State facilities. The department uses the CMS 'Survey Activity Report' to identify Washington State facilities with a history of condition level findings. For CMS surveys, there are two levels of deficiencies: standard and condition.¹⁰

- Standard Level

A deficiency is at the Standard level when there is noncompliance with any single requirement (or several requirements) within a particular standard that is not of such character as to substantially limit a facility's capacity to furnish adequate care, or which would not jeopardize or adversely affect the health or safety of patients if the deficient practice recurred.

- Condition Level

Deficiency at the Condition level may be due to noncompliance with requirements in a single standard that, collectively, represents a severe or critical health or safety breach, or it may be the result of noncompliance with several standards within the condition. Even a seemingly small breach in critical actions, or at critical times, can kill or severely injure a patient, and such breaches would represent a serious or severe health or safety threat.

Apex Spine Institute, PLLC

The applicant provided the following statements related to this sub-criterion. [source: Application p23]

"None of the above."

Department Evaluation

Below is a summary of the two areas reviewed for Apex Spine Institute, PLLC.

⁹ WAC 246-310-230(5)

¹⁰ Definitions of standard and condition level surveys: <https://www.compass-clinical.com/deciphering-tjc-condition-level-findings/>

Terminated Provider Counts Report

Focusing on the years 2020 through present, the surgery center was not involuntarily terminated from participation in Medicare reimbursement.

Conformance with Medicare and Medicaid Standards

Using the Center for Medicare and Medicaid Services (CMS) Quality, Certification & Oversight Reports (QCOR) website, the department's review included full year 2021 and partial year 2022. The department also reviewed available data from the CMS Internet Quality Improvement & Evaluation System (iQIES) for fourth quarter 2023 through second quarter 2024.¹¹

Apex Spine Institute, PLLC identified its physician owner, Allen Shoham, MD, to provide medical director services. Using data from the Medical Quality Assurance Commission, the department confirmed that Dr. Shoham holds an active medical license with no enforcement actions.

Apex Spine Institute, PLLC also provided the names and credential numbers of all roles requiring a license. Using data from the DOH Office of Customer Service, the department found all staff members' licenses in compliance.

In review of this sub-criterion, the department considered the total compliance history of the surgery center associated with Apex Spine Institute, PLLC, the applicant's only facility. The department also considered the compliance history of the medical director. Based on the information reviewed, the department concludes that Apex Spine Institute, PLLC has followed applicable state and federal licensing and certification requirements. The department also concludes there is reasonable assurance that this project would not have a negative effect on Apex Spine Institute, PLLC's compliance.

The department concludes that the applicant has demonstrated reasonable assurance that Apex Spine Institute, PLLC would continue to operate in compliance with state and federal requirements. **This sub-criterion is met.**

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

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

Apex Spine Institute, PLLC

Apex Spine Institute, PLLC provided the following statements in response to a question about how the proposed project will promote continuity in the provision of health care services in the planning area. [source: Application, pp21-22]

¹¹ CMS migrated survey information for hospice agencies to iQIES after August 2023, but the QCOR website does not contain any hospice survey reports for calendar year 2023, consequently no CMS survey information is available to the department for January-September 2023.

“Promoting Continuity of Care

Enhanced Access to Specialized Care: *By maintaining its focus on spine-related surgeries and treatments, the project reinforces Apex Spine Institute's role as a key provider of specialized care. This specialization ensures patients have continued access to high-quality, expert care for spine conditions within the planning area.*

Integration with Local Healthcare Systems: *The project aims to further integrate Apex Spine Institute's services with the broader local healthcare ecosystem. By fostering partnerships with local hospitals, primary care providers, and rehabilitation centers, the institute ensures a seamless patient care continuum from diagnosis to surgery and post-operative rehabilitation.*

Consistent Quality Improvement: *Ongoing investments in state-of-the-art surgical technology, staff training, and quality improvement programs under the project will enhance the quality of care. This ensures that patients in the planning area have access to the latest and most effective treatments for spine conditions, promoting better outcomes and patient satisfaction.*

Avoiding Unwarranted Fragmentation of Services

Filling a Critical Niche: *By focusing on spine surgery and care, the project fills a critical healthcare niche without duplicating services readily available in the planning area. This approach avoids fragmenting healthcare services and ensures that resources are concentrated where they are most needed.*

Community Health Needs Assessment: *The project is informed by a thorough assessment of the community's health needs, ensuring that the services provided are tailored to the specific needs of the population. By aligning its services with community needs, the institute ensures that its offerings complement rather than compete with other healthcare services in the area. (See The Benton and Franklin county's Community Health Improvement Plan, Exhibit 8)*

In summary, the proposed project by Apex Spine Institute is designed to enhance the continuity and quality of specialized orthopedic and pain management care in the planning area, while avoiding the fragmentation of healthcare services. Through specialized focus, integration with the local healthcare system, and a commitment to quality improvement, the project supports a cohesive healthcare environment that meets the specific needs of the community.”

Department Evaluation

As an existing provider, Apex Spine Institute, PLLC is already part of the healthcare infrastructure for the Benton-Franklin planning area. As a result, much of the impact this surgery center would have on the existing providers has already occurred. This is further evidenced by the lack of public comment submitted for this project.

Based on the information provided in the application, the department concludes there is reasonable assurance that approval of this project would promote continuity in the provision of health care services in the community. **This sub-criterion is met.**

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

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

D. COST CONTAINMENT (WAC 246-310-240)

Based on the source information reviewed and agreement to the conditions identified in the conclusion section of this evaluation, the department concludes that Apex Spine Institute, ASC meets the applicable cost containment criteria in WAC 246-310-240.

(1) Superior alternatives, in terms of cost, efficiency, or effectiveness, are not available or practicable.

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

If the project has met the applicable criteria in WAC 246-310-210 through 230 criteria, in step two, the department assesses the other options considered by the applicant. If the department determines the proposed project is better or equal to other options considered by the applicant and the department has not identified any other better options, this criterion is determined to be met unless there are multiple applications.

If there are multiple applications, the department's assessment is to apply any service or facility superiority criteria contained throughout Chapter 246-310 WAC related to the specific project type in step three. Apex Spine Institute, PLLC's application is the only application under review to add OR capacity in Benton-Frankly planning area. Therefore, step three is not applicable to this project.

Apex Spine Institute, PLLC

The applicant provided the following information in response to this sub-criterion. [source: Application, pp24-26]

"In considering the proposed project by Apex Spine Institute, several alternatives were evaluated and ultimately rejected based on a comprehensive analysis. The primary objective was to enhance patient access to specialized orthopedic and pain management care while ensuring the project's alignment with factors like capital cost, legal constraints, staffing impacts, quality of care, and operational efficiency. Here's how the selected project compares to the alternatives:

Alternative 1: Expanding Existing Hospital Services

Rationale for Rejection:

- *Capital Cost: High due to the need for building renovations and specialized equipment, making it financially less viable compared to other options.*
- *Legal Constraints: Expansion within a hospital setting could face more rigorous regulatory hurdles and compliance requirements, delaying project timelines.*
- *Staffing Impacts: Requires recruiting or training existing hospital staff for specialized spine care, potentially disrupting current services and increasing operational costs.*
- *Quality of Care: While potentially high, integrating specialized services into a general hospital environment could dilute the focus on spine care excellence.*
- *Operational Efficiency: Managing spine care within a larger hospital setting might introduce inefficiencies, such as longer patient wait times and less streamlined care processes.*

Alternative 2: Partnering with Out-of-Area Specialists

Rationale for Rejection:

- *Capital Cost: Lower upfront costs, but potentially higher long-term expenses due to specialist fees and coordination complexities.*
- *Legal Constraints: Contracting and credentialing specialists from outside the area could introduce legal complexities and administrative burdens.*
- *Staffing Impacts: Dependency on external specialists might lead to inconsistencies in staff availability and commitment, affecting continuity of care.*
- *Quality of Care: Potential variability in the quality of care due to differing practices and approaches of various specialists, challenging to standardize care protocols.*
- *Operational Efficiency: Coordination between the institute and external specialists could complicate scheduling, increase patient wait times, and affect overall service delivery efficiency.*

Alternative 3: Developing a Mobile Surgical Care Unit

Reason for Rejection:

- *Capital Cost: High initial investment in mobile units equipped with necessary medical technologies, alongside ongoing operational and maintenance costs.*
- *Legal Constraints: Mobile health services face unique regulatory challenges, including licensure across different jurisdictions and adherence to varied health codes.*
- *Staffing Impacts: Recruiting healthcare professionals willing to work in a mobile setting may be challenging, and maintaining a consistent team could impact service delivery.*
- *Quality of Care: Limited by the mobile unit's capacity to provide comprehensive spine care, particularly for procedures requiring advanced facilities.*
- *Operational Efficiency: While offering potential access improvements, the logistical challenges of operating a mobile unit (scheduling, travel between locations, setup) could reduce overall efficiency and increase costs.*

Alternative 4: Do Nothing

Reason for Rejection:

- *Capital Cost: While this alternative avoids the immediate capital expenditure associated with expansion or updates, it may lead to higher long-term costs. Failing to invest in facility improvements or technology updates could result in inefficiencies, increased maintenance costs, and the potential loss of competitiveness, affecting revenue.*
- *Legal Constraints: The healthcare sector is rapidly evolving, with changes in regulations and standards often necessitating updates to facilities and practices. By doing nothing, the institute risks falling out of compliance with future legal requirements, potentially incurring legal penalties and jeopardizing its license to operate.*
- *Staffing Impacts: Staff retention and recruitment could be negatively impacted by the decision to maintain the status quo. High-performing staff members often seek dynamic work environments where there are opportunities for professional growth and engagement with advanced treatment methods. Without continual improvement, staff morale and satisfaction may decline, leading to higher turnover rates.*
- *Quality of Care: The quality of care is likely to suffer over time without investments in new technologies, training, and facility enhancements. As other institutions advance, the gap in service quality and patient outcomes could widen, diminishing the institute's reputation and its ability to attract and retain patients.*

- *Operational Efficiency: Operational inefficiencies are likely to persist or worsen without action. As patient demands evolve and technologies advance, failing to update or optimize operations will likely result in increased wait times, reduced patient throughput, and an inability to leverage cost-saving innovations.*

By choosing the "do nothing" alternative, Apex Spine Institute would likely see a gradual erosion of its competitive position in the healthcare market. The institution would miss opportunities to enhance patient care, improve operational efficiencies, and maintain a satisfied and motivated workforce. These considerations underscore the necessity of pursuing strategic enhancements to stay aligned with industry best practices and meet the evolving needs of patients and staff.

Selected Project: Apex Spine Institute CON

- *Patient Access to Healthcare Services: The CON directly addresses the need for localized, specialized orthopedic and pain management care, enhancing patient access within the community and reducing the need for patients to seek care in distant locations.*
- *Capital Cost: The project requires no investment, it leverages the existing infrastructure of the ASC, optimizing capital outlay compared to building new facilities or extensive renovations elsewhere.*
- *Legal Restrictions: Operating within the existing legal and regulatory framework of an ASC presents fewer barriers to expansion and allows for more streamlined implementation of specialized services.*
- *Staffing Impacts: The project builds on the institute's existing expertise. This approach capitalizes on existing knowledge and minimizes disruption.*
- *Quality of Care: Specializing in orthopedic and pain management care allows for a high level of expertise, leading to better patient outcomes. The controlled environment of an ASC, dedicated solely to orthopedic and pain management care, supports higher standards of quality and safety.*
- *Cost or Operation Efficiency: The ASC model is known for its efficiency and cost-effectiveness, benefiting from specialized focus and streamlined operations. This model allows for the provision of high-quality care at a lower cost than hospital-based alternatives.*

In conclusion, the Apex Spine Institute's project was deemed superior to the rejected alternatives based on a holistic evaluation of critical factors. The decision reflects a commitment to providing high-quality, accessible, and efficient orthopedic and pain management care tailored to the needs of the local community."

Department Evaluation

While the Benton-Franklin numeric methodology does not project need for additional ORs, the applicant provided information and rationale for approval of its specialty surgery center. Further, the department did not identify any other alternatives that would be considered superior based on quality, efficiency, and costs that are available or practicable for Apex Spine Institute, PLLC. This project met the review criteria under need, financial feasibility, and structure and process of care. Based on the above information, the department concludes that **this sub-criterion is met.**

(2) In the case of a project involving construction:

- (a) The costs, scope, and methods of construction and energy conservation are reasonable;*

(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.

Department Evaluation

Given that there are no construction or alternations associated with this project, these two sub-criteria do not apply to this project.