STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT

In Re: CERTIFICATE OF NEED APPLICATION OF SIGNATURE HEALTHCARE SERVICES, LLC, TO ESTABLISH A PSYCHIATRIC HOSPITAL IN PIERCE COUNTY, Petitioner.	Master Case No. 2016-232 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER

APPEARANCES:

Petitioner Signature Healthcare Services, LLC (Signature), by
LifePoint Law, per
Gregory McBroom and Carl Swanes, Attorneys at Law

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

Intervenor The Alliance for South Sound Health (Alliance), by
Perkins Coie, LLP, per
Brian Grimm and Matthew Gordon, Attorneys at Law

PRESIDING OFFICER: John F. Kuntz, Review Judge

The Presiding Officer conducted a hearing on June 27, 28, and 29, 2016, regarding two Certificate of Need (CN) applications to establish psychiatric bed facilities in Tacoma, Pierce County, Washington. Alliance applied for a 120-bed facility. Signature applied for a 174-bed facility.

ISSUES

A. Does the Alliance application to establish a psychiatric hospital in Pierce County meet all of the required Certificate of Need criteria under WAC 246-310-210, 246-310-220, 246-310-230 and 246-310-240?

B. Does the Signature application to establish a psychiatric hospital in Pierce County meet all of the required Certificate of Need criteria under WAC 246-310-210, -200, -230, and -240?

PROCEDURAL HISTORY

Alliance is a joint venture by MultiCare Health Systems (MultiCare) and Catholic Health Initiative-Franciscan Health (Franciscan). On November 14, 2014, Alliance submitted a letter of intent to establish a psychiatric hospital in Pierce County, Washington. On December 16, 2014, Alliance submitted a CN application to establish a 120-bed psychiatric hospital in Tacoma, Pierce County, Washington.

On October 3, 2014, Signature submitted a letter of intent to establish a psychiatric hospital in Pierce County, Washington. On November 10, 2014, Signature submitted a CN application to establish a 174-bed psychiatric hospital in Tacoma, Pierce County, Washington. On February 23, 2015, Signature submitted an amended application.

The Program conducted a concurrent review of Alliance's application and Signature's amended application, including the Alliance and Signature responses to the Pivotal Unresolved Issue. On January 15, 2016, the Program issued its evaluation and conditionally awarded the certificate of need to Alliance if Alliance

agreed to comply with the Program's 12 required conditions.[1] Alliance agreed to all of the required conditions. AR 2778. On February 1, 2016, the Program issued CN #1563 to Alliance contingent upon Alliance accepting the 12 required conditions. AR 2779–2781. The Program denied the Signature 174-bed application.

On February 12, 2016, Signature filed a Request for Adjudicative Proceeding to appeal the Program's evaluation approving the Alliance application and denying the Signature application. Alliance was permitted to intervene in the matter.[2] On April 15, 2016, the Program provided the Application Record to the parties. Upon discovering the Application Record was incomplete, the Program supplemented the Application Record on May 16, 2015.[3]

A hearing on Signature's Request for Adjudicative Proceeding was conducted on June 27, 28, and 29, 2016.

SUMMARY OF PROCEEDINGS

At the hearing, the Program presented the testimony of CN Executive Director Bart Eggen.

Signature presented the testimony of Bob McGuirk, CN Analyst; and Michael Sherbun, Signature Healthcare's Vice President of Clinical Services.

---

[1] RCW 70.38.115(4) authorizes the issuance of a conditional certificate of need under specific conditions.

[2] *See* Order Granting Alliance for South Sound Health's Petition for Intervention, dated April 11, 2016.

[3] *See also* Signature's Exhibit P-2. Signature offered the documents for inclusion in the Application Record and the Presiding Officer chose to include the documents as an exhibit.

Alliance presented the testimony of Frank G. Fox, Ph.D., Principal, Health Trends; Carl Halsan, Principal, Halsan Frey LLC; Tim Holmes, Vice President, Behavioral Health, MultiCare Health System; Samuel Huber, M.D., Chief Medical Officer, Behavioral Health, MultiCare Health System; Natalia Kohler, Finance Officer, East Region & Behavioral Health, MultiCare Health System; and Anne M. McBride, Division Director, Behavioral Health Services, CHI Franciscan Health.

The following exhibits were admitted at hearing:

Certificate of Need Program

Exhibit D-1: The 2781-page Application Record.

Signature Healthcare

Exhibit S-2: June 10, 2016, Signature additions to the Application Record. Attachments B, C, and D were admitted.

Attachment A (documents related to Signature's Clark County application) was not admitted.

The parties submitted briefs in lieu of closing arguments as authorized under RCW 34.05.461(7). The initial closing briefs were due on **July 22, 2016,** and the responsive closing briefs were due on July 29, 2016. The Program requested a short continuance to **August 1, 2016**, which was granted. The hearing record was therefore closed on **August 1, 2016**.

I. FINDINGS OF FACT

1.1 A CN applicant who applies to operate or build a psychiatric hospital facility must meet the criteria in WAC 246-310-200: (1) whether the proposed project is needed; (2) the project will foster containment of the costs of health care;

(3) is financially feasible; and (4) will meet the criteria for structure and process of care. WAC 246-310-200(1). A CN applicant must also meet the criteria in WAC 246-310-210 through WAC 246-310-240. WAC 246-310-200(2). The applicant must establish that its application meets all of the above CN criteria.[4] *See* WAC 246-10-606. It is not the Program's responsibility to prove or disprove whether the CN applicant's application meets the criteria.[5]

1.2 An applicant "shall submit a certificate of need application in such form and manner and containing such information as the department has prescribed and published." WAC 246-310-090(1)(a). There is no application form specifically tailored for psychiatric hospital application, so applicants use the form created for acute care hospital applications.

1.3 A CN is valid for two years. RCW 70.38.125(1). One six-month extension may be granted if substantial and continuing progress is being made toward the commencement of the project. RCW 70.38.125(1). A CN application may be issued on a conditional basis. *See* RCW 70.38.115(4) and WAC 246-310-490(3).

---

[4] The Program has limited time to evaluate a CN application by statute (*see* RCW 70.38.115(7) and (8)). Given the time limitations, the Program relies upon the applicants to provide accurate information to permit the Program to evaluate the applications. The Program does not investigate the accuracy of the applicant's assertions for that reason.

[5] This is a continuing point of confusion in CN appeals–once a party requests a hearing it is not an "appeal" of the CN Program's evaluation. Rather the applicant must prove to the Presiding Officer, based on information in the application record, that its application meets all of the CN criteria. *See DaVita v. Department of Health*, 137 Wn. App. 174, 184-186 (2007); *see also* WAC 246-10-606. Of course parties may address the issues the Program identifies in its evaluation. While he considers the Program's written evaluation, and the parties' arguments regarding that evaluation, the Presiding Officer is not required to defer to it. *DaVita v. Department of Health,* 137 Wn. App. at 182-183

1.4 The CN applicant must complete the CN application form that contains information as are prescribed and published in the application form. An incomplete CN application may be returned to the applicant. *See* WAC 246-310-090(2)(b). In the circumstance where a concurrent review is being conducted, the practical effect is requiring the applicant to start the CN application process over. In addition to paying another application fee, there is no guarantee that sufficient need will exist for the CN applicant who is required to re-start the CN analysis. This is because the successful CN applicant may obtain all of the existing need (here psychiatric treatment beds) in the planning area. The agency's CN process does not normally exclude the incomplete applicant early on in the process because whether an application is "incomplete" is often a question of fact. The agency's preferred practice is to evaluate concurrent applications together to ensure that all necessary findings of fact are addressed in the agency's decision as required under WAC 246-310-200.

1.5 Changes to an application *may* be considered an amendment. *See* RCW 70.38.115(11) and WAC 246-310-100(1) (Emphasis added). Such changes include:

(a) The addition of a new service or elimination of a service included in the original application.
(b) The expansion or reduction of a service included in the original application.
(c) An increase in bed capacity.
(d) A change in the capital cost of the project or the method of financing the project.
(e) A significant change in the rationale used to justify the project.
(f) A change in the applicant

When looking at the change in the capital cost of the project, the CN Program generally requires an amended application when the increase in the total capital expenditure exceeds 12 percent or $50,000, whichever is greater.[6]

Alliance Application

1.6 Alliance is a joint venture by MultiCare and Franciscan. Each party will have a 50 percent ownership in the Alliance project. AR 388, AR 393, AR 464 (MultiCare Letter of Intent dated November 14, 2014), and AR 466 (Franciscan Letter of Intent dated December 12, 2014). Alliance applied to establish a 120-bed psychiatric hospital in Pierce County on the campus of the MultiCare Allenmore Hospital, 1901 S. Union Avenue, Tacoma, Washington. The capital expenditure for the project is $40,642,925. Alliance anticipates that the 120-bed facility will become operational on January 1, 2018. Under this timeline, the first year of operation will be 2018 and the third year of operation will be 2020. Dividing the total project cost by the number of beds shows the cost per bed to be $338,691.04.

1.7 On January 8, 2015, the Program sent a screening letter to Alliance requesting additional clarification regarding Alliance's application. AR 1248-1251.[7] On February 23, 2015, Alliance responded to the Program's screening letter to provide the additional requested information. This included a letter of intent clarifying the participation of MultiCare and Franciscan in the psychiatric hospital project. AR 1262-1269 (Exhibit 20).

[6] *See* RCW 70.38.115(11). While this subsection refers to nursing home projects, the CN Program has used this "yardstick" measurement in other CN projects.

[7] References to the Application Record are designated "AR". References to the Hearing Transcript are designated "TR".

1.8 On October 5, 2015, the CN Program issued a Pivotal Unresolved Issue[8] letter to Alliance as authorized by WAC 246-310-190(2)(b). *See* AR 2427-2430. The Program requested Alliance provide additional information and documents in support of its application. On November 19, 2015, Alliance submitted its Pivotal Unresolved Issue response. AR 2523–2616. Alliance's response included updated resolutions from the MultiCare and Franciscan board of directors. AR 2535 (Resolution of MultiCare Board of Directors, dated November 11, 2015); AR 2537 (Resolution of the Executive Committee of the Board of Directors of Franciscan, dated October 29, 2015); AR 2539 (Franciscan approval, dated December 18, 2014); AR 2541 (Multicare Resolution of the Member of Alliance, dated June 2, 2015); and AR 2542-2563 (unexecuted Member Agreement between Multicare and Franciscan). Alliance also provided an unexecuted Condominium Development Terms and the draft real estate purchase and sales agreement (AR 2565-2585).

<u>Signature Application</u>

1.9 Signature proposed a 174-bed psychiatric facility (153 adult beds; 21 adolescent beds) for the Pierce County planning area. It provided an executed purchase and sales agreement for a parcel of land that totaled 4.9 acres in the Madison park site. AR 90-108 (Attachment 9). The site address is identified as 4100 South 19th Street, Tacoma, Washington. AR 15. Signature's application

---

[8] The term "pivotal unresolved issue" is not specifically defined. It is the mechanism for the CN Program to submit a written request for additional information following the completion of the public hearing or public comment period and extends the review period. *See* RCW 70.38.115(8). The pivotal unresolved issue written request is not considered ex parte contact under WAC 246-310-090(1).

stated that in the event its project is approved, the City of Tacoma will require a conditional use permit. If it received the requested CN, Signature anticipated the conditional use permit process would take six to seven months. AR 9. The project will also require an existing Wetland Permit. AR 15 and 120-121(Attachment 12).

1.10 Signature will construct the hospital in space leased from Tacoma Life Properties, LLC, a limited liability corporation totally owned by Dr. Kim. The capital expenditure for the 174-bed psychiatric hospital project would be $42,565,368. Signature anticipated the facility would become operational on January 1, 2018. Under this timeline, the first full year of operation is 2018 and the third full year of operation is 2020. Dividing the total project cost by the number of beds shows the cost per bed to be $244,628.55.

1.11 On October 5, 2015, the Program issued a Pivotal Unresolved Issue letter to Signature as authorized under WAC 246-310-190(2)(b). *See* AR 2422–2425. The Program requested Signature provide additional information and documents in support of its application. On November 18, 2015, Signature provided its pivotal unresolved issue response. AR 2435–2441. Its response included copies of an email with Patricia Beard of the City of Tacoma Economic Development Office, dated November 3, 2014, (AR 2438-39), in which Ms. Beard anticipated that Signature's project would take six to seven months to receive all of the land use approvals assuming there were no appeals. Signature also provided Dr. Soon Kim/Signature Health Services LLC's Statement of Cash

and Liquid Assets, dated August 6, 2015. This statement showed Dr. Kim held $76.8 million in cash and liquid assets.

WAC 246-310-210 "Determination of Need"

1.12 WAC 246-310-210(1) requires a CN applicant prove there is a need for the proposed service. Chapter 246-310 WAC does not include a psychiatric bed need forecasting method. RCW 70.38.115(5) and the State Health Plan[9] allow for discretion in selecting and applying evaluation methods to determine psychiatric bed need. The CN applicant provides its bed need assumptions to allow a review of the applicant's need methodology and to determine whether need exists for the applicant's proposed project in the planning area. If need exists, the question is how many psychiatric beds are needed per every 100,000 persons in the population. The "how many beds per 100,000 persons" figure is known as the use rate. Currently the use rate is 27.25 beds per 100,000 individuals of population.[10] The need calculation multiplies the use rate times the anticipated population growth in the planning area (here Pierce County) to determine the anticipated number of beds in the future (the planning horizon). The existing bed number (here 23 beds located at CHI-Franciscan) is then subtracted from the anticipated number of beds to determine actual need in the planning area.

---

[9] The 1987 Washington State Health Plan contained a need methodology for calculating acute care bed and psychiatric bed need. The State Health Plan was "sunset" in 1989 but the acute care bed need methodology is still considered a viable need methodology method. The same is not true for the psychiatric bed need methodology as the Department of Health cannot obtain all of the required data necessary to apply the psychiatric bed methodology. *See* AR 2467.

[10] *See* Evaluation for CN Application submitted by SW Behavioral, LLC, Master Case No. 2013-1283.

1.13 The proposed hospital project determines the appropriate planning horizon for the project. The planning horizon for projects which add beds to an existing facility is generally six years from the application date. The planning horizon for project establishing a new facility is generally 15 years from the application date. Alliance and Signature each propose to build a new facility, so a 15-year horizon is appropriate. Measured from the 2014 application date, both applications should measure how many psychiatric hospital beds (if any) are needed by 2029.

1.14 Alliance calculated bed need using a 15-year planning horizon (2014-2029). AR 426-427 and AR 2470-2471. Alliance's 120- bed project did not include beds for adolescent patients. Using the medium population forecast from the Office of Financial Management released in 2012 (the last full year for which data was available), the 27.25 use rate per 100,000 individuals of population, and subtracting the current 23-bed psychiatric bed capacity in Pierce County, Alliance projected a 177.29 bed need by 2029. *See* AR 426-427 (Table 16) and AR 2471. Alliance's need calculations would support its proposed 120-bed project.

1.15 Signature calculated bed need using a 15-year planning horizon (2014 through 2029). Signature's 174-bed project included 21 adolescent beds. Signature provided both adolescent and adult population estimates beginning with the 2014 application year and measuring bed need at six, seven, 10, 15, and 20 year intervals. AR 26-29 and AR 2468-2469. Signature calculated a total bed need using the Office of Financial Management medium population forecast

released in 2012, the 27.25 use rate per 100,000 individuals per population and subtracting the current 23-bed capacity. AR 27. Signature projected a 198-bed need for patients 12 and older by 2029. AR 29. Signature's need calculations would support Signature's proposed 174-bed project.[11] There were no adolescent beds in existence in Pierce County when Signature submitted its application.

1.16 Adolescent bed need and adult bed need are calculated separately, as adolescent patients are not housed with adult patients. The Program performed separate adolescent and adult need calculations when evaluating Signature's need calculations. AR 2472-2473. However, the Program considered information that did not exist at the time Signature submitted its application. On April 4, 2015, the Washington State Legislature passed Second Substitute Senate Bill 6312 (2014 c 225 sec. 106) which amended RCW 70.38.111 to exempt psychiatric beds converted from acute care beds from certificate of need review.[12] *See* AR 2467. On April 21, 2015, the Program issued CN #1543 to MultiCare to allow the conversion of 30 acute care licensed beds to psychiatric beds at its Tacoma General Hospital facility for the development and operation of a child/adolescent mental health service program.

---

[11] Signature stated that although it offered to provide a 21-bed adolescent unit, it sought to establish a 174-bed psychiatric hospital, whether or not adolescent beds are included. *See* Signature's Closing Brief, pages 6-7, and footnote 7.

[12] Subsection 106 of S2SSB read: "(10) To alleviate the need to board psychiatric patients in emergency departments, for fiscal year 2015 the department shall suspend the certificate of need requirement for a hospital licensed under chapter 70.41 RCW that changes the use of licensed beds to increase the number of beds to provide psychiatric services, including involuntary treatment services. A certificate of need exemption under this section shall be valid for two years."

1.17 On April 22, 2015, the Program sent a screening letter to Signature. The Program asked Signature the following:

> 1. Please explain the impact on your proposed project that the increase of 30 beds to provide child/adolescent mental health services by MultiCare Tacoma General Hospital and 20 psychiatric beds by MultiCare Auburn Medical Center would have on our project. In other words, would the conversion of these beds to psychiatric beds impact your proposal?
>
> 2. If necessary, please make revisions to all applicable areas within the application.

Signature did not view the amendment to RCW 70.38.110(10), or MultiCare's bed conversion project to affect its proposed 174-bed CN project.[13] Signature considered MultiCare's bed conversion as temporary (that is, for two years). Signature contended MultiCare's 30-bed conversion project should not be counted for need calculation purposes. Signature interpreted the RCW 70.38.111(10) exemption to apply only to adult care beds.

1.18 As currently written, the RCW 70.38.111(10) exemption does not limit its application to adult acute care beds. MultiCare's conversion of 30 acute care beds to adolescent psychiatric beds addresses the adolescent psychiatric bed need for the foreseeable future. *See* AR 2473 (Tables 13 and 14). In evaluating the Alliance and Signature applications, the foreseeable future means thru 2029.

1.19 Based on the Application Record, the reliability of the underlying population and patient data used by the parties, the Presiding Officer finds that need exists for 176.8 psychiatric beds in Pierce County by 2029. AR 2472-2473

[13] This subsection was renumbered to RCW 70.38.111(11) pursuant to ESHB 2450 (chapter 31, Laws of 2016) effective June 28, 2016. The renumbering did not otherwise amend the language of the subsection.

(Table 12). Alliance proposes a 120-bed project. Dividing the $40,642,925 project cost by 120 beds shows a per bed cost of $338,691.04. Signature proposes a 153-bed project (that is 174 total beds minus the 21 adolescent beds). Dividing the $42,565,368 project cost by 153 beds shows a per bed cost of $278,205.01. Either project will meet the psychiatric bed need criteria in the Pierce County planning area under WAC 246-310-210(1).

1.20 Signature argues its 153-bed project is superior to Alliance's 120-bed project, as it more closely meets the projected 176.8 bed need in 2029.[14] This issue is less a need argument and more a consideration of which of the two applications is superior under WAC 246-310-240(1). The total number of beds in a project is one factor for consideration. Need analysis also consider other factors, such as expected fill rate (how many beds are actually occupied at a given time) and the accuracy of the bed need calculations that are made 15 years into the future.[15] *See* TR 236-238 (Fox). Alliance and Signature each explained their respective need calculations to allow a review of each project under WAC 246-310-210(1). Providing more beds does not, in and of itself, create superiority.

1.21 During the application process, Signature considered an "optimal solution", namely the approval of both the Signature and Alliance projects.[16]

---

[14] *See* Signature's Opening Brief, pages 45-46.

[15] For example, one of the assumptions used in calculating need is that the planning area's population will consistently grow throughout the 15-year planning horizon. Like any assumption, this may not be true in this case.

[16] *See* Signature's Opening Brief, pages 4-5, and 55-62; Signature's Closing Brief, page 4.

Signature reached this conclusion by calculating need on a 20-year forecast horizon, which is a forecast horizon that has been used in some past CN evaluations. *See* AR 425 and AR 2249-2250. Signature contends using the 20-year horizon and calculating need using the total population figure (children, adolescents, and adults) is consistent with the American College of Emergency Physicians methodology approach. AR 135, 171-172. Using a 20-year horizon, a total population approach, and a higher use rate (29.9 beds per 100,000 persons rather than the 27.25 beds per 100,000), Signature calculated a 251-net need for beds by 2035. But Signature's total population figure includes adolescents and there is no need for adolescent psychiatric beds through 2029. *See* AR 2473 (Tables 13-14). Signature argues the benefits outweigh the potential costs of possible additional bed surplus. In reaching this conclusion, Signature's alternative approach relies on the Division One Court of Appeals decision in *Providence Health & Services Washington v. Department of Health*, 194 Wn. App. 849, 2016 WL 3660801 (July 5, 2016). Signature argues this approach would foster market competition, improve patient access, and provide patients with a choice of providers. Signature argues the Program failed to consider this alternative.[17] While Signature discussed this approach in the application and in its briefing, it did not specifically offer this approach as an option under its WAC 246-310-240(1)

---

[17] *See* Signature's Closing Brief, Page 4. Generally an issue raised for the first time in a reply brief is too late to warrant consideration. *See Cowiche Canyon Conservancy v. Bruce Bosley*, 118 Wn.2d 801, 809 (1992). Given that there was some discussion of this approach in both the application record and by Signature's expert at hearing, the Presiding Officer finds it appropriate to address the issue.

analysis, so Signature never seriously considered this alternative in its application. *See* AR 62-66; AR 2502-2503.

1.22 Signature's reliance on the *Providence Health & Services* holding does not support its two facility solution. In *Providence Health & Services,* the University of Washington applied for a CN to add 79 acute care beds to its Seattle facility even though the traditional numeric need methodology did not demonstrate need. In determining the need for additional beds, the court held that the Program need not rely on the numeric methodology in the State Health Plan but could rely on an alternative methodology, such as accessibility to underserved groups, expansion of programs with better results, and promotion of training programs, to indicate a need for additional beds. *Providence Health & Services*, 194 Wn. App. at 862-864.

1.23 The *Providence Health* alternative approach does not apply here. There was a need for 147.5 psychiatric beds in 2014 and that need grows to 176.8 beds by 2029. While calculating greater numeric need, Signature's approach does not address any of the other factors such as accessibility to underserved groups or the promotion of training program, and the current situation does not require the 20-year planning horizon. The correct forecast horizon is 15 years. The need calculation does not support Signature's proposed 251-bed need alternative.

1.24 Under WAC 246-310-210(2), a CN applicant must prove it will provide services to all residents of the service area, including low-income, racial and ethnic minorities, women, handicapped persons, the elderly, and other

underserved groups. Alliance provided its draft admission and charity care policies. AR 507-546 (Exhibit 11: Financial Assistance Policy); AR 547-564 (Exhibit 12: Admission Policy); and AR 2476. Alliance anticipates projected Medicare revenues of 26.6 percent and Medicaid revenues of 18.7 percent of its total hospital revenues. AR 2476-2477. Alliance projects its charity care percentages of 3.00 percent of total revenue or 5.49 percent of its adjusted revenue. AR 2477 (Table 16). These figures exceed the required Puget Sound regional averages.

1.25 Signature is currently not a Pierce County provider. In support of its application Signature provided a copy of its draft admissions policy. AR 256-257 (Appendix 15) and AR 2474-2475. Signature's admission policy would allow the admission of patients at its psychiatric hospital without regard to race, color, religion, sex, and national origin. Signature anticipates Medicare revenues of 26.6 percent and Medicaid revenues of 18.7 percent of its total hospital revenues. Signature projects its charity care percentages of total revenue at 3.33 percent of total revenue or 5.97 percent of adjusted revenue. AR 2476 (Table 15). The 3.33 percent of total review figure exceeds the Puget Sound regional average; the 5.97 percent of adjusted revenue is below the Puget Sound regional averages.

1.26 Alliance disputes the accuracy of Signature's charity care percentages, as Signature considers bad debt (defined as services that were billed to the patient but cannot be collected) as part of its charity care figures.[18]

---

[18] *See* Alliance Post-Hearing Brief, pages 9-11.

Signature's expert acknowledges in principle that bad debt cannot be considered as charity care but in his experience the definition of bad debt has changed over time. *See* TR 486 (McGuick). Signature submitted a proposed charity care policy with its application, which permitted a review of its charity care policy. *See* AR 258-260 (Attachment 16). As currently written, Signature's proposed draft charity care policy does not disqualify it under WAC 246-310-210(2).

1.27 A review of the admission policies, charity care policies, and Medicare eligibility certification and policies, both Alliance and Signature meet the criterion under WAC 246-310-210(2).

WAC 246-310-220 "Financial Feasibility"

1.28 Under WAC 246-310-220 a CN applicant must prove its project is financially feasible. Specifically the applicant must demonstrate that it can meet the capital and operating costs of the project; that the cost of the project will probably not result in an unreasonable impact on the costs for health services; and that the applicant can appropriately finance the project.

1.29 WAC 246-310-220(1) requires the applicant prove its project can meet its immediate and long-range capital and operating costs. The Department of Health's Hospital and Patient Data System Officer examines the applicant's pro forma statement and performs a financial ratio analysis.[19] The ratio analysis

[19] While the CN Program's application form requires that an applicant provide a pro forma statement as a part of its application, the term is not specifically defined in chapters 70.38 RCW or 246-310 WAC. "Pro forma" is used to describe accounting, financial, and other statements or conclusions based upon assumed or anticipated facts. *See* Black's Law Dictionary, Sixth Edition, page 1212 (1990).

examines the applicant's immediate and long-term ability to finance the proposed project. The examination covers the first three years of operation.

1.30 Alliance's 2018-2020 pro forma statement covers the first three years of its operation of the proposed 120-bed project. AR 570-574. Alliance's projected revenues and expenses reveal the project would suffer a net loss in 2018, but would experience a net profit in years 2019 and 2020. The Department's Hospital and Data System's office examined the current and projected debt ratios for the project.[20] AR 1353-1357 and AR 2485. There was no long term debt because the Alliance hospital does not exist. The Alliance financial ratios were derived from the terms Alliance provided for its proposal project. Richard Ordos (the Department of Health Hospital and Data System evaluator) examined the financial strength of the Alliance partners (MultiCare and Franciscan). Given the financial strength of the MultiCare and Franciscan organizations, Mr. Ordos concluded the Alliance project possessed the necessary financial capacity to proceed with the project and could meet the financial feasibility and cost containment criteria. AR 1353-1354.

1.31 Signature's 2018-2020 pro forma statement covers the first three years of the operation of the proposed 174-bed project. AR 114-118 (Attachment 11). Signature's projected revenues and expenses reveal the project would suffer a net loss of income in 2018, but would experience a net profit in years 2019 and 2020. AR 115 (Attachment 11). The Department Hospital and Data System's

---

[20] The ratios are: long-term debt to equity; current assets/current liabilities; assets funded by liabilities; operating expenses/operating revenues; and debt service coverage.

office examined the current and projected debt ratios for the project.[21] Signature has no long term debt because the hospital does not yet exist. The Signature financial ratios were derived from the terms Signature provided for its proposed project. Richard Ordos (the Department of Health Hospital and Data System evaluator) examined Signature's financial ratios. AR 349-350. Based on that information Mr. Ordos determined that Signature's 174-bed project could meet the immediate and long-range capital expenditures and operating costs. AR 249-350 and AR 2484-2485.

1.32 Signature submitted a second pro forma statement which addressed a 120-bed project.[22] AR 342-346 (Attachment 21). Normally Signature would need to submit a third pro forma statement in support of a 153-bed proposal (the adult bed portion of its 174-bed application) but the Program assured Signature that a 153-bed pro forma statement was unnecessary.[23] Signature's $42,565,368 capital expenditure would enable both the 120-bed and the 174-bed projects to show a profit by year three. As the proposed 153-bed project was "bracketed" by two profitable projects, Signature reasoned that a 153-bed project would similarly meet the financially feasible criterion. TR 392-395. The Program accepted this "bracketing" approach (that is, no requirement for a 153-bed pro

[21] The ratios are: long-term debt to equity; current assets/current liabilities; assets funded by liabilities; operating expenses/operating revenues; and debt service coverage.

[22] The Hospital and Data Systems office did not evaluate the 120-bed project.

[23] An applicant must submit an application form containing such information as the Program prescribes and publishes as necessary. *See* WAC 246-310-090(1)(a). The CN Program application form specifically requests a pro forma statement of revenue and expense, and a pro forma balance sheet. *See* AR 49 and 52 (Signature application) and AR 448 (Alliance application).

forma), a fact it confirmed at the hearing. While he is not required to defer to the Program's approach, the Presiding Officer adopts the "bracketing" procedure under the facts in this case because: (1) Signature relied on the Program's assurances that the bracketing approach was acceptable; and (2) the Program issued CN #1543 to MultiCare for the adolescent bed conversion project after Alliance and Signature submitted their applications.[24]

1.33 Based on the Application Record and the above analysis, both Alliance and Signature meet the WAC 246-310-220(1) criterion.

1.34 Under WAC 246-310-220(2), the applicant must prove the proposed project's costs, including any construction costs, will probably not result in an unreasonable impact on the costs and charges for health care. This criterion can be broken down into two questions:

(1) Will the project costs have an impact on the costs and charges for health services?

(2) If there is an impact on the costs and charges for health services, is that impact a reasonable or an unreasonable one?

<u>Alliance</u>

1.35 Alliance's 120-bed facility in Pierce County would have a capital cost of $40,642,925. To show it met the WAC 246-310-220(2) criterion, Alliance submitted the following documents:

(1) Letter of Intent Regarding Joint Venture;
(2) Letter of Zoning Conformance;

[24] The Presiding Officer's opinion in this case does not relieve other applicants from providing a pro forma in any future psychiatric bed applications. Applicants are required to prove that their applications meet all of the relevant CN criteria. *See* WAC 246-10-606.

(3) Allenmore Property Deed;
(4) Contractor Letter; and
(5) Financial Commitment Letters.

See AR 392 and AR 2487-2488. Alliance would own and operate the hospital, which it would develop as a commercial condominium. The annual condominium dues would be $324,000. MultiCare would provide management services. *See* AR 2587-2604.

1.36 Signature questioned the accuracy of Alliance's capital cost figure on several grounds. First, Signature contends Alliances underreported its capital cost figure, as Alliance failed to specifically include the demolition costs (the removal of the old medical building on the proposed project site) in its capital cost figure. *See* AR 442 (Table 23: Estimated Capital Costs) and AR 566 (Exhibit 13: Sellen Construction Cost Estimate). Dr. Frank Fox reviewed the Sellen Company construction cost estimate worksheets and one of the worksheets contained the information related to the demolition costs. TR 251 (Fox). Dr. Fox's review of the worksheet showed that approximately $800,000 was allotted for the demolition. Signature presented no evidence to contradict Dr. Fox's statement. The Presiding Officer finds Dr. Fox's testimony on the inclusion of the demolition costs to be credible. The Alliance capital cost figure accurately reflects the cost of the demolition of the medical office building.

1.37 Second, Signature contends Alliance failed to provide sufficient documentation to show Alliance held a sufficient interest in its proposed hospital

project site.[25] Site control requires control over the land on which the facility was located and Signature argues that Alliance failed to show site control.[26] Signature argues MultiCare (one of the Alliance partners) either: (1) Did not properly convey this land to Alliance under the draft real estate purchase and sales agreement (thereby evidencing that Alliance did not have site control over the land); or (2) MultiCare did convey the land to Alliance and Alliance failed to include the cost of the land in the project's costs. Signature characterized the Alliance condominium agreement as a lease and that condominium agreement/lease failed to show Alliance had control over the facility for at least five years with options to renew for no less than 20 years.

1.38 The Presiding Officer does not find the above Signature arguments to be persuasive. Alliance provided a statutory warranty deed showing that MultiCare controlled the Allenmore Medical Center land in question. *See* AR 495-500 (Exhibit 8). The statutory warranty deed contained a legal description of the land in question. AR 498. MultiCare retains control over the land and it is not selling or gifting the land to Alliance for this project.[27]

1.39 Alliance also submitted a draft condominium agreement, in which Alliance stated that it would possess Condominium A (the airspace above the land)

---

[25] As an illustration, *see* AR 14-15 (Signature's application form). Sufficient interest is defined to include clear legal title for the proposed site; a lease for at least five years with options to renew for no less than a total of 20 years in the case of a psychiatric hospital.

[26] *See* Signature's Opening Brief, pages 31-36; Signature's Closing Brief, pages 17-25.

[27] Whether a sale or a gift, the price would constitute a capital cost. *See* RCW 70.38.025(2) and WAC 246-310-010(10) (definition of capital expenditure).

and MultiCare would possess Condominium B (the land under which Alliance's hospital and all of the remaining property as represented in the statutory warranty deed). That the airspace condominium was the property being transferred, and not the land on which it sits, is evidenced by a description of the size of the property being conveyed (88,805 square feet–the size of Alliance's four-story hospital building) with condominium dues as $324,000 per year. AR 414, and AR 493-494. MultiCare will continue to own the land underneath the airspace condominium. TR 123 (Kohler) and TR 275 (Fox). As there is no land being conveyed by sale or gifting, there is no need to include the cost of land in the project's cost.

1.40 Signature relies on the language contained in Alliance's own real estate purchase and sales agreement (real estate agreement) in support of its argument that the MultiCare land should be included in the capital cost of Alliance's project.[28] Paragraph 1.5 of the real estate agreement uses the word land within the definition of the term "property" while the term "project" is separately defined as the building. *See* AR 2566-2567. Alliance disagrees.[29]

1.41 Although the terms "property" and "project" are separately defined, a full understanding of Alliance's application requires a more careful reading of the real estate agreement. MultiCare is identified as the seller of the land depicted in the "property". As discussed in paragraph 1.39 above, the "property" and the "project" are both 88,805 square feet in size. The land is also described in relation

[28] *See* Signature's Closing Brief, pages 17-22.

[29] See Alliance's Post-Hearing Brief pages 24-25; Alliance's Reply Brief, pages

to the condominium agreement. A careful reading shows the land describes the *location* of the condominium (that is the location of the project) rather than *transferring* the land beneath the condominium. Reading the real estate agreement, the management services agreement, the condominium agreement and the statutory warranty deed together, it is clear that there is no "land" being sold or transferred as a result of Alliance's project. Alliance did not omit the high cost of the land as Signature argues. There is no capital cost error in the capital cost of the Alliance project

1.42 Signature argues Alliance failed to prove the site control requirement because it did not include a lease. This argument fails. Alliance is purchasing the hospital building outright from MultiCare. AR 2565; TR 99 and 101 (Kohler). There is sufficient evidence in Alliance's application (a statutory warranty deed showing MultiCare already owns the site; a draft purchase and sales agreement conveying the hospital building to Alliance; and draft condominium terms) to show Alliance has site control. *See* AR 495-500; AR 2561-2563; and AR 2564-2585. See also TR 99-101 (Kohler). Alliance meets the site control issue here.

<u>Signature</u>

1.43 Signature proposed its new 174-bed facility in Pierce County at a capital cost of $ 42,565,368. To show that it complied with the WAC 246-310-220(2) criterion, Signature submitted the following documents:

(1) Non-binding Estimate of Construction Costs;
(2) Documentation of Site Control;
(3) Purchase and Sales Agreement;
(4) Letter of Funding Commitment; and

(5) Land Use Documentation.

See AR 68 and R 2486-2487. Approval of Signature's project would require a condition, namely the submission of executed copies of the documentation of the land use approval for the site. AR 2486.

1.44 Signature submitted an executed Commercial and Investment Real Estate Purchase and Sales agreement related to the project site. The agreement identified the location of the site, the purchase price, and outlined the roles between the purchaser of the property (Signature Healthcare Services LLC) and the seller (Jemstone LLC).[30] AR page and AR 2486.

1.45 As with other new hospital construction projects, Dr. Kim will fund Signature's construction through his wholly owned real estate subsidiaries. In the Signature application the real estate subsidiary (here Tacoma Life Properties LLC) leases the facility to the hospital (here Tacoma Behavioral Healthcare Hospital LLC). The draft agreement between the parties outlines the roles and responsibilities for each party.

1.46 Alliance contends Signature does not show that it has sufficient site control.[31] Alliance contends: (1) Signature is the applicant and the key subsidiaries (Tacoma Life Properties LLC and Tacoma Behavioral Healthcare Hospital LLC) do not currently exist; and (2) Signature did not show that it can use

---

[30] As a part of its application, Signature provided an Organization Structure chart. AR 73 (Attachment 2). This chart represents the entire organizational structure, starting with Dr. Soon K. Kim and sets forth the interlocking limited liability corporations and their role in the project.

[31] *See* Alliance Post-Hearing Brief, pages 11-16.

the site for the stated purpose, given the current zoning and need for environmental reviews.

1.47 The first issue is the existence of Signature's subsidiaries. As stated in Finding of Fact 1.43 above, Signature (the CN applicant) will create both a real estate subsidy (Tacoma Life Properties LLC) and a hospital (Tacoma Behavioral Healthcare Hospital LLC). All of the organizations flow from Dr. Kim's ownership interest. *See* AR 73. Although Signature's expert did not understand the intricacies of Signature's organizational structure (*see* TR 460 (McGuick)), chapter 70.38 RCW currently written does not require an applicant to use a specific ownership model. A CN applicant must sufficiently describe the various facets of the project to enable a review of whether the project meets the CN criteria. Here Signature provided sufficient information to allow for a review of whether its project meets the CN requirements for ownership.[32]

1.48 The second issue relates to Signature's chosen project site. Signature contacted Pat Beard of the City of Tacoma Economic Development Division regarding a zoning reclassification of Signature's application site from the residential and commercial classification to an all commercial development classification that would permit Signature to construct its proposed hospital project. AR 120-121. Given the location and the need for mitigation (landscaping, high quality design, infrastructure upgrades), Ms. Beard anticipated it could take six to seven months to rezone the land to allow Signature to construct its hospital.

[32] Parties may submit drafts for review. By submitting drafts some issues may remain unanswered, which is why CN applications may be granted on a conditional basis. *See* RCW 70.38.115(4).

Signature's expert believed this six to seven month period was a realistic timeline. *See* AR 9; TR 436-438 (McGuick). Alliance's land use expert expressed several concerns that could extend the reclassification period beyond the six to seven month period to a much longer period. TR 196-198 (Halsan). Alliance's expert gave a range of cost to accomplish the zoning mitigation. TR 198-200 (Haslan). Neither Signature's expert nor its pro forma statement identified the cost to achieve the above-identified mitigation necessary to comply with the land use requirements. *See* AR 115-118.

1.49 Bart Eggen is the Executive Director of the Office of Community Health Systems and reviews evaluations prepared by the CN Program. Mr. Eggen has no expertise as a land use planner. TR 598. Despite his lack of expertise as a land use planner, Mr. Eggen has derived general experience from his years of reviewing CN applications.[33] Mr. Eggen believes Signature could obtain the necessary land use permits to permit the construction of the hospital project and the Program passed Signature on this issue in its evaluation. TR 659. Where an applicant's project requires additional land use or zoning, the Program does not immediately issue a CN or a conditional CN to the applicant. Why is this important? By first issuing the letter of intent, the Program enables the applicant to

[33] *See generally* RCW 34.05.461(5), which allows agencies to rely on their experience and expertise.

complete the land use/zoning issues. Doing so ensures the applicant will not use up the two-year[34] period provided to the applicant to commence the CN project. TR 598 (Eggen). Assuming Signature's mitigation costs are included in its capital costs, and assuming it can complete the land use and zoning requirements within the six to seven month estimate, Signature's project would start six to seven months behind Alliance's project. Unlike Signature's project, Alliance's proposed site is currently zoned for hospital use.

1.50 Based on the Application Record and the above analysis, both Alliance and Signature can meet the WAC 246-310-220(2) criterion. However, the Alliance project will provide patient access in a shorter period of time, given the six to seven month delay for Signature to obtain the land use or zoning permits. For this reason, the Alliance project is superior under the WAC 246-310-220(2) criterion.

1.51 Under WAC 246-310-220(3), the applicant must prove it can appropriately finance its project.

Alliance

The capital expenditure (purchase of the land; construction and equipping the building; all construction and consultation fees; and Washington sales tax) associated with Alliance's project is $40,642,925. Alliance's project will be funded by cash on hand from MultiCare and Franciscan (the Alliance partners in the

[34] A certificate of need shall be valid for two years. RCW 70.38.125(1). One six-month extension may be made if I can be substantiated that substantial and continuing progress toward commencement has been made. RCW 70.38.125(1); WAC 246-310-010(13) (definition of "commencement of the project"). So the applicant only has two years to make substantial progress toward completing the CN project.

venture) and they provided financial commitment letters demonstrating their ability to fund the project. AR 568-569 (Exhibit 14) and 2489-2490. To further demonstrate the project's financial soundness, Alliance provided both current (2013) and historical (2011 and 2012) audited financial statements for MultiCare and Franciscan. AR 575-824 and AR 2489-2490.

1.52 Signature contends that Alliance cannot appropriately finance its project.[35] Signature infers this from: (1) Alliance qualifying for a five million dollar grant from the state; and (2) news articles indicating Alliance will seek other sources of funding for the project. Alliance did qualify for the five million dollar grant as a result of 2SSB 6312 but it did not actually qualify for the grant within the snapshot in time (the time period under which the project is considered). Alliance relied on the information and resources on hand during the relevant period. Signature provided no evidence that the Alliance partners (MultiCare and Franciscan) did not have the existing funds as described in Alliance's application to finance the project.

1.53 Signature submitted copies of newspaper articles to suggest Alliance was seeking funding in addition to or to replace the existing joint partner funding. The newspaper articles were written on May 3, 2016, and July 4, 2016, which is clearly after the Program's evaluation.[36] The newspaper articles are outside the snapshot in time (the time period under which the project is considered), as the

---

[35] *See* Signature Opening Brief, pages 39-41.

[36] *See* Signature Healthcare's Opening Brief, page 39, lines 12-16 and Exhibit F.

Program issued CN # 1563 on February 1, 2016. Signature implies the right to a *de novo* review allows for the presentation of evidence that supports its case, even if that evidence did not exist when the snapshot in time was taken.[37] *See University of Washington Medical Center v. Department of Health*, 164 Wn.2d 95, 103 (2006)

1.54 The Washington Supreme Court's decision in the *University of Washington* held that both the CN statutes and rules anticipated that the decision would be made quickly. Requiring the Presiding Officer to admit evidence after the snapshot in time here undermines the statutory objective of expeditious decision making. *See University of Washington*, 164 Wn.2d, at 104. The newspaper articles Signature provides do not justify going outside the snapshot in time in this case. Even if they were considered, the information in the newspaper articles does not conclusively contradict the evidence that Alliance's partners (MultiCare and Franciscan) possessed sufficient monies to fund the project at the time of the CN application. Signature's argument is unconvincing here.

Signature

1.55 The capital expenditure (purchase of the land; construction and equipping the building; all construction and consultation fees; and Washington sales tax) associated with Signature's project is $42,565,368. Signature will receive an initial capitalization for the project of $14,897,476 from Dr. Kim, which represents 35 percent of the total capital expenditure amount. Signature will

[37] *See* Signature's Opening Brief, pages 40-41.

borrow the remaining 65 percent of the capital expenditure amount through commercial banks loans and provided three bank letters to the availability of the funds. AR 109-113 (Attachment 10).

1.56 Alliance disputes that Signature has sufficient funding to enable it to construct its hospital project, as Signature's three bank letters do not specifically make formal commitments to lend monies.[38] *See* AR 111-113. A review of the letters provided to Signature by the Pacific Western Bank and the Torrey Pines Bank, state that the letters are not a commitment to lend. *See* AR 111 and 112. As written, the letters do indicate: (1) the banks in question have previously financed multiple psychiatric hospital projects for Dr. Kim and Signature Healthcare; and (2) the bank letters further indicate the banks conclude Dr. Kim and Signature Healthcare Services are sufficiently creditworthy. The letters provide sufficient proof the banks anticipate lending funds to Signature for its Tacoma project.

1.57 Richard Ordos of the Department of Health Hospital and Data Systems office considered the three bank letters in his review. Mr. Ordos found that Signature's letter proved it had sufficient financial strength to obtain the remaining 65 percent loan necessary to finance the construction of the Tacoma facility. Therefore the bank letters prove Signature can obtain bank funding to complete its proposed Tacoma project.

---

[38] *See* Alliance's Post-Hearing Brief, pages 19-22

1.58 Based on the Application Record and the above analysis, both Alliance and Signature meet the WAC 246-310-220(3) criterion.

<u>WAC 246-310-230 "Structure and Process of Care"</u>

1.59 Under WAC 246-310-230, the applicant must prove it can provide for adequate staffing; appropriate organizational structure and support; conformity with licensing requirements; continuity of health care; and the provision of safe and adequate care.

<u>Alliance</u>

1.60 Under WAC 246-310-230(1), the applicant must prove it can adequately staff the CN project. Alliance anticipates all 120 beds will become operational by January 2018. Under this timeline 2018 represents the first full year of operation; 2020 represents the third full year of operation. In projecting staffing levels, Alliance projects a 68 percent occupancy rate in 2018, an 83 percent occupancy rate in 2019; and an 87 percent occupancy rate in 2020.[39] AR 1259 and AR 2493. Alliance therefore needs sufficient staffing to provide care to those occupancy levels. Alliance will recruit the majority of staff from its existing MultiCare and St. Francis facilities in 2018. The Alliance partners currently operate 11 hospitals (Franciscan seven hospitals; MultiCare four hospitals) in Washington. Alliance is both familiar and experienced in staff recruitment and retention.

---

[39] Not all hospital beds are occupied every day. Hospitals perform an average daily census (count the number of beds containing patients in the facility) on a daily basis to measure occupancy. The occupancy rate is measured by a percentage of the total beds. *See* TR 236-237 (Fox) (testifying to the fill rate) and TR 404 (McGuick) (testifying to the occupancy rate). For example, at 68 percent occupancy, Alliance would have patients in 81.6 beds or 82 beds (rounded up).

Signature

1.61 Signature expected all 174 hospital beds will be operational by January 2018. Using this timeline, year one is 2018 and year three is 2020. Signature anticipates achieving an 18 percent occupancy rate in 2018; a 53 percent occupancy rate in 2019; and a 63 percent occupancy rate in 2020. AR 2491. Signature projects that its nursing, clinical, and administrative staff would increase over this three year period to accommodate the increases in occupancy. Signature operated 13 psychiatric hospitals in several states (Arizona, California, Illinois, Nevada, and Texas) at the time it filed its CN application, which provides it with sufficient experience in recruiting and retaining staff.[40]

1.62 Alliance and Signature each question their opponent's staffing cost assumptions. This includes the type and number of staff employed (registered nursing or mental health workers) and the expenses related to the applicant's selected staffing models (salaries and benefits). For example, Alliance used historical data from Pierce County and estimated benefit costs (28 percent of salaries). Signature estimates a lower estimated benefit cost (17 percent of salaries) based on a corporate-wide (more national) model. Comparing the Alliance (a not-for-profit corporation) and Signature (a for-profit corporation) staffing assumptions results in an "apples to oranges" comparison. Neither the Alliance nor the Signature system is clearly superior to the other for that reason.

[40] In its post hearing briefs, Signature stated it now operates 14 hospitals.

1.63 The parties also differ on the organizational structure they choose to follow. Alliance follows an integrative behavioral health and physical healthcare model, which integrates the treatment of psychiatric patients with comorbidities (that is, medical conditions other than psychiatric). Alliance supports this integrative mode by co-locating the psychiatric facility with the Tacoma MultiCare Allenmore Hospital (an acute care hospital).[41] Signature finds a freestanding facility is less sterile and can offer unique programs (such as ball fields, rope courses and outside areas).[42] Signature has treatment plans in place to address a patient's comorbid patient needs and it has transfer agreements with local emergency rooms to address transport to other facilities to address the patient's comorbid treatment needs. Both Alliance and Signature have rapid response teams to address medical emergencies for psychiatric patients.

1.64 A February 2011 project by the Robert Wood Johnson Foundation determined that in contrast to evidence for clinical collaborative care models, there was little research evidence comparing the effectiveness of different organizational approaches in delivering the supportive care. AR 1230.[43] The Presiding Officer finds that under the Robert Wood Johnson Foundation study shows that either care model can be effective as an organizational structure.

1.65 Based on the Application Record and the above analysis, Alliance and Signature would both meet the WAC 246-310-230(1) criterion.

---

[41] TR 134-138 (Huber).

[42] TR 523-525 (Sherbun).

[43] AR 1230 blocks the word designated as "unclear".

Alliance

1.66 Under WAC 246-310-230(2), the applicant must prove its proposed project will provide the necessary ancillary and support services (that is, working relationships with existing community clinics and independent health care providers that provide outpatient support to psychiatric patients or clients and provide a continuity of care to those patients/clients post-hospitalization) needed to support the project's health services (here psychiatric beds). Alliance supports the 120-bed psychiatric hospital project by using existing MultiCare and Franciscan ancillary and support services. The Alliance previously established the ancillary and support services with the community clinics and independent providers in Pierce County. *See* AR 2173-2241 (Letters of Support provided during the public hearing).

Signature

1.67 Signature anticipated the new psychiatric hospital will become operational in January 2018. However, Signature's anticipated January 2018 operation date does not take into effect the six to seven month delay necessary to complete the land use permitting process. TR 598-599 (Eggen); *see* Finding of Fact 1.47 above. Signature listed the common ancillary and support services necessary to operate a 153-bed psychiatric hospital and indicated that it will directly provide many of these outpatient support services internally. Signature has contacted community provides and intends to create the necessary working relationships with the ancillary and support service provider to address the

necessary continuity of care services. However, Signature has not yet formally established these working relationships with the local area providers necessary to comply with this criterion. Neither did Signature provide a timeline for how long it will take to establish the working relationships and therefore support the continuity of care patients require.

1.68 Based on the Application Record and the above analysis, both Alliance and Signature can meet the WAC 246-310-230(2) criterion. While both Alliance and Signature meet the criterion, Alliance's project is better equipped to complete its project in a shorter period of time regarding ancillary and support services. Alliance has existing working relationships with community providers. Signature has yet to establish the necessary relationship with community providers.

1.69 Under WAC 246-310-230(3), the applicant must prove the project will meet all of the applicable licensing requirements, including any applicable Medicare and Medicaid program requirements.

<u>Alliance</u>

1.70 The Alliance hospital will be a new psychiatric bed hospital and it does not have a history of Medicare certification or inspections by the Department of Health. MultiCare and Franciscan (the Alliance partners) currently provide health care services in the state of Washington. Neither MultiCare nor Franciscan has any history of criminal convictions related to the operation of a health care facility, licensure revocation, or other sanctions. They have a history of compliance

with Medicare and Medicaid requirements. AR 2496-2497. The Joint Commission is an independent, not-for-profit organization that accredits and certifies hospitals in the United States. The Joint Commission accreditations and certifications are nationally recognized as a measure of quality. AR 2497. The Program reviewed the accreditation information on the Joint Commission website, which did not reveal any adverse licensing actions for the hospitals operated by either MultiCare or Franciscan.[44] AR 2496-2497.

Signature

1.71 Signature is a new provider to the state of Washington and has no history of Department of Health or Medicare certifications or inspections in Washington State. Signature operates 13 psychiatric hospitals located in other states, 12 of which show a history of compliance with Medicare and Medicaid requirements. These 12 facilities do not have adverse licensing actions based on survey responses received by the Program.[45] *See* AR 2496.

1.72 The Joint Commission website provides access to that history. All of Signature's 13 out-of-state facilities have Joint Commission accreditation and 12 of the facilities have national patient safety and quality improvement goals measured on the website. *See* AR 1424-1539 and AR 2496. Based on Signature's history of Medicare and Medicaid compliance at its out-of-state facilities, and based on

---

[44] The Program asserts that it reviewed the Joint Commission website, but it did not include a printout of the website page or pages on the date the Program examined it. Given that information on websites change, the Program should have included a copy of the website pages it reviewed in evaluating the Alliance application.

[45] The Program asserts that it reviewed survey information. The Presiding Officer did not find the survey responses the Program referred to in its evaluation.

Signature's accreditation with the Joint Commission, it is reasonable to infer that Signature's proposed Pierce County facility will comply with all Medicare and Medicaid program requirements.

1.73 Alliance argues Signature and its owner have a reputation for misconduct at their facilities in other states (California and Illinois) as well as a documented history of substandard care.[46] This misconduct includes findings at other Signature facilities of substandard patient care, sexual assaults by patient on other patients, and the failure to ensure patient safety. AR 1654-1656 and AR 2498-2499.[47] Signature acknowledged these substandard care issues and has taken steps to ensure they are not repeated. Signature notes not a single Signature hospital has ever lost any license or any federal, state, or Joint Commission accreditation despite these patient safety mistakes. *See* AR 2500-2501; *see also* TR 511-512 (Sherbun). The Joint Commission materials the Program reviewed indicate that Signature did not lose its accreditation. Each of Signature's hospitals has undergone at least one quality of care review by the relevant state licensing facility. The Presiding Officer finds that Signature's past patient safety issues are concerning but that as an organization Signature has made every good faith attempt to correct them.

1.74 Based on the Application Record and the above analysis, Alliance and Signature both meet the WAC 246-310-230(3) criterion.

---

[46] *See* Alliance Post-Hearing Brief at pages 34-36.

[47] *See* Alliance Post-Hearing Brief, page 35, footnote 5.

1.75 WAC 246-310-230(4) requires the applicant prove the proposed project will promote continuity in the provision of health care. This requires the applicant prove the proposed project will not result in an unwarranted fragmentation of services and will have an appropriate relationship to the service area's existing health system.

Alliance

1.76 Alliance anticipated its new psychiatric hospital will become operational in January 2018. Alliance is a joint MultiCare-Franciscan project and these facilities have already established working relationships with other Pierce County healthcare providers. *See* AR 2173-2241 (letters for support). It provided a draft transfer agreement in the event one of its psychiatric patients requires transferring to an acute care hospital. AR 58 and AR 2497-2498. Alliance's established working relationships and transfer agreement will guard against any unwarranted fragmentation of health care services.

Signature

1.77 Signature anticipated its 174-bed psychiatric hospital would become operational January 2018. As discussed above, this anticipated operational date will be delayed six to seven months to allow Signature to complete the land use permitting and zoning process. Once completed the facility is large enough to offer a broad array of patient care need, including partial inpatient hospitalization and outpatient services. Offering these services on site will reduce the fragmentation of psychiatric or behavioral healthcare services in Pierce County. AR 2497.

Given its experience operating 13 out-of-state hospitals, Signature further anticipates it will not be difficult to establish the necessary working relationships with other Washington facilities. Signature is working to meet with the existing Pierce County healthcare providers to develop the necessary working relationships. Signature did not provide any timeline for establish the necessary working relationships.

1.78 Based on the Application Record and the above analysis, both Alliance and Signature meet the WAC 246-310-230(4) criterion. Alliance has already established these relationships in Pierce County. Alliance is the superior choice for this reason.

1.79 WAC 246-310-230(5) requires the applicant provide reasonable assurances that its proposed project will provide safe and adequate care services to the public. This includes showing the applicant will provide services in accordance with applicable state and federal laws, rules, and regulations.

1.80 The Alliance partners (MultiCare and Franciscan) have a history of complying with the Medicare and Medicaid requirements and the Joint Commission certification. *See* Finding of Fact 1.70 above. Alliance contends that it will provide safe and adequate care services to the public.

1.81 Relying on the out of state facility information regarding its compliance with Medicare and Medicaid, and its certification for its out of state facilities with the Joint Commission, Signature contends that it will provide safe and adequate care services to the public. *See* Findings of Fact 1.71 and 1.72 above.

1.82 Based on the Application Record and the above analysis, Alliance and Signature both meet the WAC 246-310-230(5) criterion.

WAC 246-310-240 "Cost Containment"

1.83 WAC 246-310-240 requires the applicant prove: (1) there are no superior alternatives available in terms of cost, efficiency, or effectiveness when compared to the project; (2) where the project involves construction, that the costs, scope, and methods of construction and energy conservation are reasonable; and (3) where the project involves construction, that the project will not have an unreasonable impact on the healthcare costs and charges. In reviewing applications reference can be made to: nationally recognized standards; standards developed by Washington State professional organizations; federal Medicare and Medicaid certification requirements; or state licensing requirements.[48] Absent recognized standards the reviewer of the application (the CN Program or subsequently the Presiding Officer) can rely on the agency's experience and expertise.[49] When a concurrent review is performed for multiple applications, the WAC 246-310-240(1) analysis looks at the totality of both applications to weigh all factors, and determine if one project is superior to the other application(s).[50]

---

[48] *See* WAC 246-310-200(2). Typically the CN Program receives information regarding national or recognized standards from the applicants as a part of the application process. *See* TR 630-631 (Eggen).

[49] *See* RCW 34.05.461(5). CN hearings are governed by chapter 34.05 RCW (the Administrative Procedure Act).

[50] *See* Findings of Fact, Conclusions of Law, and Final Order, In Re Certificate of Need Evaluation of the Puget Sound Kidney Centers Application Proposing to Establish a Nine Station Dialysis Center in Skagit County and DaVita Application Proposing to Establish a Nine Station Dialysis Center in Skagit County, Master Case No. M2012-1073, pages 19-20, Frank Lockhart, Presiding Officer.

The Presiding Officer examines the WAC 246-310-240(2) and (3) criteria as part of the superiority analysis.

1.84 Under WAC 246-310-240(1) the Presiding Officer first examines whether superior alternatives currently exist. There are currently only 23 psychiatric beds in Pierce County with a need for 147.5 psychiatric beds by 2014 alone. No superior alternative currently exists to the establishment of a new psychiatric bed facility.[51]

1.85 Next the Presiding Officer reviews the alternatives the applicants considered in their applications.

Alliance

Alliance examined five options: converting existing inpatient acute care beds to psychiatric beds; a joint venture to construct a 120-bed facility on the Allenmore hospital campus; a 60-bed hospital on the Allenmore hospital campus; a 150-bed hospital on the Allenmore hospital campus; or not building any project. AR 457-461 and AR 2502-2503. Alliance rejected the "no project" alternative given the need for psychiatric beds in Pierce County. Alliance determined there was an

[51] In its opening brief, footnote 29, Signature raised a dormant Commerce Clause argument against the Program's superiority analysis. *See* Signature's Opening Brief, page 42. Signature argues this arises from the Program's "highly limited and subjective superiority evaluation to determine that the Alliance project should be chosen." *Id,* page 42. The dormant Commerce Clause prohibits a state from impeding free market forces to shield in-state businesses from out-of-state competition. *See West Lynn Creamery*, *Inc. v. Healy*, 512 U.S. 186, 193 (1994). The Presiding Officer cannot determine if there is a basis for a constitutional dormant commerce clause argument here without more information. For example, it is unclear whether Signature is arguing whether WAC 246-310-240(1) is facially unconstitutional or unconstitutional as applied. *See Harrington v. Spokane County*, 128 Wn. App. 202 (2005). The Presiding Officer cannot declare a rule unconstitutional. *See* WAC 246-10-602(3)(c). Neither does he have the authority to determine the constitutionality of the law it administers. *See Bare v. Gorton*, 84 Wn.2d 380, 383 (1974). To the extent that Signature raises a dormant commerce clause issue or argument, its record is made here.

insufficient supply of acute care hospital beds available to convert to psychiatric beds and thereby address the planning area need, so it dismissed this option as well. Alliance focused on choosing one of the three remaining alternatives (either a 150 bed facility; a 120-bed facility; or a 60 bed facility). Alliance chose the 120-bed facility on the Allenmore hospital campus as the best alternative among these three choices. AR 458-461(Tables 26, 27, and 28) and AR 2503. In support of the 120-bed choice, Alliance's expert explained a 120-bed facility accounted for patient outmigration and the recent increase of beds in the surrounding planning areas. TR 307-308, and TR 310-311 (Fox).[52]

1.86 Signature contends Alliance incorrectly chose the 120-bed option, when the objective facts show that the Alliance 150-bed option was the appropriate choice.[53] Signature argues a 150-bed option is superior because a larger hospital: (1) reaches profitability in less time; (2) does not approach the critical occupancy rates in a short period of time; and (3) it more closely meets the 176.8 bed need projected in 2029. The Program and Alliance disagree.[54]

1.87 The Presiding Officer disagrees that the Alliance 150-bed option is the superior option here. To begin with, Alliance is a not-for-profit facility. Profitability is not a consideration, except to the extent the project must show profitability by the third year of operation. The project proposing the number of

---

[52] The Presiding Officer notes there is a major population center in Seattle that is adjacent to and immediately north of Pierce County.

[53] *See* Signature's Opening Brief, pages 43-44 and Signature's Closing Brief, pages 8,

[54] See Program's Post-Hearing Closing Response Brief, pages 8-9 and Alliance's Reply Brief, pages 14-15.

beds that more closely matches the bed need calculation number is a factor for consideration but it focuses on only one factor. The number of beds in a project is based on several additional factors, including the bed utilization or fill rate (the occupancy rate of the patient beds), the accuracy of bed projections 15 years into the future, and what percentage of unmet need that a specific project or facility actually capture. Alliance determined the 150-bed facility would more closely meet the projected number of beds needed in 2029, but it would be more costly to build and less efficient to operate, given that there would be a larger idle capacity during that period. TR 259 (Fox). Alliance projected that some patients would leave Pierce County for their care, and outmigration is not accounted for in calculating the bed need. TR 307-308 (Fox). Projecting need for Pierce County residents was difficult given the recent increase in the number of new beds in the surrounding counties. TR 311 (Fox). These factors support Alliance's decision to choose a 120-bed facility.

Signature

1.88 Signature initially considered three options regarding the appropriate psychiatric bed hospital size: a 174-bed psychiatric facility; a 194 bed psychiatric facility; or a 145-154 bed psychiatric hospital. AR 62. Signature added a fourth alternative: to build a 90-120 bed facility. Signature's preferred the 174-bed option, but offered the 90-120 bed option in part to demonstrate that it is financially feasible to build two facilities. AR 62; *see also* Findings of Fact 1.21–1.23.

Signature ultimately rejected the 90-120 bed, 194-bed, and 145-154 bed facility alternatives for the 174-bed option.[55] AR 63-65.

1.89 The Program's issuance of CN #1543 to MultiCare for the adolescent bed conversion project reduced the Signature project's bed number to 153 adult beds. From a numerical need standpoint alone, either Alliance's 120-bed psychiatric facility or Signature's 153-bed facility could meet Pierce County's need for psychiatric beds. Neither Alliance's 120-bed project nor Signature's 153-bed project would completely address the 176.8-bed need projected for 2029. As previously stated, the number of beds in a project is a factor but not a controlling factor.

1.90 There is not sufficient need to support two psychiatric bed facilities.[56] The Presiding Officer therefore moves to the third step of the superiority analysis, namely comparing the Alliance and Signature projects to each other to determine whether either project is a superior alternative in terms of cost, efficiency, or effectiveness. RCW 70.38.115(7); WAC 246-310-240(1). The analysis requires looking at the WAC 246-310-240(2) and (3) criterion first.[57]

---

[55] As the Presiding Officer noted in Footnote 11 above, Signature stated that it sought to establish a 174 bed hospital whether or not adolescent beds were included. *See* Signature's Closing Brief, pages 6-7, and footnote 7. The Presiding Officer finds the 21 adolescent beds was an integral part of Signature's 174-bed option. As there is no need for adolescent beds, the project is for the remaining 153 adult beds. Additionally, Signature argued in favor of its 153 adult bed need figure in its hearing request. See Request for Adjudicative Proceeding, page 8, line 24 through page 9, line 3.

[56] *See* Findings of Fact 1.21–1.23 above.

[57] *See* Finding of Fact 1.83 (footnote 49).

1.91 Under WAC 246-310-240(2), when a project requires construction, the project must be evaluated to determine: (a) if the costs, scope, and methods of construction and energy conservation are reasonable; and (b) that the project will not have an unreasonable impact on the costs and charges to the public of providing health services by other persons.

Alliance

1.92 Under WAC 246-310-240(2)(a), Alliance provided assurances that its project will be constructed to meet both the Washington State Building Code and the Washington Energy Code. AR 461-462 and AR 2504-2505. Alliance's application shows the cost, scope, and method of construction and energy conservation are reasonable for a 120-bed facility.

Signature

1.93 Under WAC 246-310-240(2)(a), Signature has developed 12 hospitals and has opened two in the past year. AR 62 and AR 2504. As a new facility, Signature's facility will be required to meet industry standards and Washington State licensing and construction review standards. It will also meet the Center for Medicare and Medicaid Services standards for construction. Signature's application shows that the cost, scope, and method of construction and energy conservation are reasonable for a 153-bed facility. Signature's application shows the cost, scope, and methods of construction and energy conservation are reasonable for a 153-bed facility.

1.94 Measuring whether a project can meet the WAC 246-310-240(2)(b) (the project will not have an unreasonable impact on the cost and charges to the public for providing health care) can be measured using the WAC 246-310-220(2) criterion. Alliance met the WAC 246-310-220(2) criterion. *See* Findings of Fact 1.35 through 1.42 and 1.50. Signature met the WAC 246-310-220(2) criterion. *See* Findings of Fact 1.43 through 1.50. Neither Alliance's project nor Signature's project will have an unreasonable impact on the costs and charges to the public.

1.95 Based on the Application Record and the above analysis, Alliance and Signature both meet the WAC 246-310-240(2) (a) and (b) criteria. Given the Alliance project is superior under the WAC 246-310-220(2) criterion, the Presiding Officer finds the Alliance project is superior under the WAC 246-310-240(2) criterion.

1.96 The WAC 246-310-240(3) criterion measures whether a project will involve appropriate improvements or innovations in the financing and delivery of health services which foster cost containment and which promotes quality assurance and cost effectiveness. Alliance proposes to finance its project using available reserves. Signature proposes to finance its project using available internal financing and cash loans. Neither the Alliance nor the Signature financing and delivery methods propose any innovations in project financing. For that reason, the WAC 246-310-240(3) criterion does not apply here.

1.97 In its evaluation, the Program determined Alliance's project to be superior to Signature's project for three reasons:

(1) the existing inpatient medical and psychiatric services provided by MultiCare and Franciscan will enable Alliance to more immediately develop relationships in the community to provide more efficient and effective development of the necessary inpatient medical and behavioral health support services;

(2) the existing medical and psychiatric outpatient services provided by MultiCare and Franciscan will enable Alliance to more immediately develop relationships that will promote continuity in the delivery of outpatient services; and

(3) The location of the Alliance project on an existing hospital campus will promote more immediately development of the Alliance project and provide superior access to medical services over Signature's project. *See* AR 2503-2504.

1.98 Signature argued the above three reasons are an incomplete superiority review. A complete review requires a review of the costs, efficiency and effectiveness under the "totality of the applications" standard upon objective evidence in the record.[58] Signature identified five additional issues in its adjudicative proceeding request:

1. Non-compliance matters discovered by the CN Program should have resulted in the Alliance's CN application being returned or denied.

2. Alliance failed to establish site control. Among other things, all materials provided by MultiCare Health Systems ("MultiCare") are revocable and can be discretionarily modified.

3. In response to the Pivotal Unresolved Issue ("PUI") information demand to determine if the financial pro forma was complete or reliable, the Alliance submitted incomplete organizational documents.

---

[58] *See* Signature's Opening Brief, lines 7-8. The Presiding Officer reads Signature's argument to require a "second" evaluation or re-evaluation of all of the WAC 246-310-210 through WAC 246-310-240 criteria as a part of the superiority analysis. Doing so will result in some repetition of earlier CN findings. To the extent possible, references will be made to those earlier findings.

4. Alliance's project should have either been removed from comparative review or denied because the application was incomplete, required an amendment, and was unreliable.

5. The CN Program based its decision on an incomplete, inaccurate, and irrelevant application of tie-breakers.

Request for Adjudicative Proceeding filed February 12, 2016, page 3.

1.99 Signature identified two additional issues in its request for an adjudicative proceeding: (1) When should an application be returned or denied prior to the evaluation process; and (2) when should an application be returned or denied prior to the concurrent review process.

1.100 Changes to an application *may* be considered an amendment. *See* WAC 246-310-100(1) (Emphasis added). Such changes include:

(a) The addition of a new service or elimination of a service included in the original application.
(b) The expansion or reduction of a service included in the original application.
(c) An increase in bed capacity.
(d) A change in the capital cost of the project or the method of financing the project.
(e) A significant change in the rationale used to justify the project.
(f) A change in the applicant.

1.101 Change of Application: Signature argues that Franciscan was not listed as an Alliance Board member in the Articles of Incorporation. AR 2427-2428. This prompted the Program to declare a pivotal unresolved issue. *See* Finding of Fact 1.8 above. Alliance responded to the pivotal unresolved issue by submitting documents showing Franciscan to be a board member. AR 2524, AR 2539, and AR 2541. Although it was required to submit documentation to show which Franciscan employee was on the Alliance board,

there is no question that Alliance was a joint venture between MultiCare and Franciscan. *See* Finding of Fact 1.6 above. The Presiding Officer finds there was no change in the Alliance applicants, so there was no requirement for Alliance to amend its CN application under WAC 246-310-100(1)(f) on this point.

1.102 Non-Compliance: Signature argues MultiCare filed incorporation papers on December 11, 2014, that identified itself as the sole member of the Alliance. Signature further argues that MultiCare's amendment of its governing documents to include joint venture partner Franciscan on June 2, 2015 was untimely. As stated in Finding of Fact 1.101 immediately above, there was no change in the applicant. Both MultiCare and Franciscan were identified by Alliance from the beginning of the application process. AR 388. While Alliance needed to file additional documentation in response to the pivotal resolved issue request, the Presiding Officer finds that Alliance clearly identified its partners from the beginning of the application process. The application must provide sufficient evidence to allow for the review of the application. RCW 38.70.125(4) permits for the conditional issuance of a CN. The production of conditional documentation will suffice, subject to the production of executed or completed documentation as part of the CN decision. Alliance identified the two Alliance partners (MultiCare and Franciscan) and provided the necessary documentation showing each partner was commitment to the project.

Site Control:

1.103 The Presiding Office finds Alliance established site control. *See* Findings of Fact 1.35–1.42 above. Alliance met the site control issue as "prescribed as published" in WAC 246-310-090(1).

Tie-Breaker Analysis:

1.104 Signature argued that no objective tie-breaker analysis was performed when comparing the Alliance and Signature applications. Unlike the kidney dialysis regulation in WAC 246-310-288, there is no tie-breaker rule that applies in psychiatric hospital beds situations. The only "tie-breaker analysis" is a multi-step process to determine which project constitutes the most favorable project.[59] The tie-breaker analysis is an examination of which CN project best meets the four CN criteria. *See DaVita Healthcare Partners, Inc., v. Department of Health*, 192 Wn. App. 102, 115-116 (2015). Based on a review of each project, the Presiding Officer finds:

A. Complete Application. Both Signature and Alliance each provided a complete CN application to address the need for psychiatric beds in Pierce County.

B. Number of Beds. Signature's application would provide a 153-bed facility. Alliance's application would provide a 120-bed facility. Neither application completely meets the identified 176.8 bed need by 2029 (the 15-year planning

---

[59] As discussed in Footnote 5 above, the CN adjudicative proceeding is not a determination whether the CN Program correctly evaluated the tie-breaker. The issue is which applicant best meets the four CN criteria as identified in WAC 246-310-200.

horizon). The number of beds, without a more thorough analysis of other factors (occupancy rates; in and out migration) is not a definitive factor.

C. Cost per Beds. Dividing the total project cost by the number of beds provides a cost per bed for each project. Alliance's cost per bed is $338,691 ($40,642,925 divided by 120 beds). Signature's cost per bed is $278,205 ($42,565,368 divided by 153 beds). The cost and size of each project is based on a number of factors that affect this cost per bed figure.[60] These differences include the costs for expenses, salaries, wages, and benefits for staff.

In addition, a review of Signature's capital cost amount fails to show the cost for the expenses associated with the land-use and zoning issues related to the project. Even if it had provided the capital cost amounts regarding the land-use issues, Signature's own expert stated the question is not cost but cost-effectiveness that is key. TR 487-488 (McGuick). The Presiding Office finds the cost per bed figure is therefore one factor but not a controlling factor here. Signature's lower cost per bed figure does not make its application superior for that reason.

D. Commencement of Project. Both Alliance and Signature anticipated the commencement of their respective psychiatric hospital bed projects by January 2018. However, Signature's anticipated January 2018 commencement date did not factor in the six to seven month delay arising from the need to obtain zoning permits. *See* Findings of Fact 1.49-1.50. Even if Signature could qualify its

[60] If Signature were to build the entire 174-bed project it initially proposed, the cost per bed would be reduced to $244,628.55 ($42,565,368 divided by 174 beds).

site based on the information received from the City of Tacoma, the Presiding Officer finds this six to seven month delay precludes Signature from commencing its CN project by January 2018. The primary intent of CN projects is to provide accessible health services.[61] Alliance's project location is currently zoned for hospital use. The Presiding Officer finds that Alliance can more closely initiate its project by the January 2018 commencement date, which makes the Alliance project superior on this point.

E. Geographic Location. Another factor is the geographic location of the proposed facility. Alliance's project is sited on the Allenmore Hospital campus. Signature's proposed site is located within about one-quarter mile from Alliance's proposed site. This issue is aligned with the arguments raised by the parties that one practice model (free standing site versus a site incorporated with a hospital facility) is superior to the other. The Presiding Officer did not find any superiority regarding the choice of the practice model presented by the parties. *See* Findings of Fact 1.63–1.64.

The geographic proximity of the proposed two project sites does not tell the entire story. The Alliance psychiatric bed project will be physically connected to the Allenmore hospital facility. This connection will provide a time savings in the transfer process, which will benefit the patient by providing medical care faster. Signature's transfer process requires some form of transportation such as an

---

[61] *See Overlake Hospital Association v. Department of Health*, 170 Wn.2d 43, 53-55 (2010).

ambulance. This transfer agreement does not have the ease of use and treatment time saving as the Alliance process.

F. Continuity of Care. Two of the WAC 246-310-240(1) factors used in the superiority analysis are efficiency and effectiveness. These two factors are also measured by the criteria found in WAC 246-310-230(2) and (4), which state:

> (2) The proposed services will have an appropriate relationship, including organizational relationship, to ancillary and support services…
>
> (4) The propose 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.

Alliance consists of two partners, MultiCare and Franciscan. These two partners have a long and successful history of providing medical care in the Pierce County community. Alliance will be managed by MultiCare and will be able to use the existing ancillary and support services of its two partners. This includes the existing relationships with medical groups in Pierce County. Signature anticipates that it will establish the necessary relationships with local providers and there is no evidence that it cannot do so. However, Signature has not stated how long it will take to establish the necessary relationships with the local providers. The issue is not whether Signature can establish these ancillary and support services. The issue here is how long it will take Signature to do so. Alliance is superior given that it has already established the appropriate relationships superior

Patients experiencing psychiatric issues require treatment and support beyond that received in a psychiatric hospital. These patients require the attention

and the support of other agencies and health care providers within the planning area. Alliance has an ongoing relationship or the support of the groups and individuals within the mental health community in Pierce County. These groups include but are not limited to: community activists; healthcare providers; the Tacoma-Pierce County Health Department; homeless advocates; and local residents. *See generally* AR 2180-2241 and AR 2313-2409. Signature has been and will continue to meet with the existing Pierce County health care providers to develop the necessary relationships. It will then integrate those relationships in providing the necessary continuity of health care.

The issue is not whether Signature can establish the necessary support within the community. The issue is how long it will take Signature to do so. Alliance's project is superior given it has already established local support. The existence of the local support improves patient access to those services.

II. CONCLUSIONS OF LAW

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

is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. RCW 34.05.452(1).

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

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

Certificate of Need Requirements

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

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

(c) Whether the proposed project is financially feasible; and

(d) Whether the proposed project will meet the criteria for structure and process of care identified in WAC 246-310-230.

(2) Criteria contained in this section and in WAC 246-310-210, 246-310-220, 246-310-230, and 246-310-240 shall be used by the department in making the required determinations.

2.5 WAC 246-310-210 defines the "determination of need" in evaluating CN applications,[62] 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

[62] The sub-criteria set forth in WAC 246-310-201(3), (4), (5), and (6) are not discussed in this decision as they are not relevant to the Alliance and Signature projects.

plan as deserving of priority. Such consideration shall include an assessment of the following:

(a) The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

(b) The past performance of the applicant in meeting obligations, if any, under any applicable federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal financial assistance including the existence of any unresolved civil rights access complaints against the applicant);

(c) The extent to which medicare, medicaid, and medically indigent patients are served by the applicant; and

(d) The extent to which the applicant offers a range of means by which a person will have access to its services (e.g., outpatient services, admission by house staff, admission by personal physician).

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

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

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

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

(3) The project can be appropriately financed.

2.7 WAC 246-310-230 sets forth the "criteria for structure and process of

care” to be used in evaluating CN applications, to wit:

> A determination that a project fosters an acceptable or improved quality of health care shall be based on the following criteria.
>
> (1) A sufficient supply of qualified staff for the project, including both health personnel and management personnel, are available or can be recruited.
>
> (2) The proposed service(s) will have an appropriate relationship, including organizational relationship, to ancillary and support services, and ancillary and support services will be sufficient to support any health services included in the proposed project.
>
> (3) There is reasonable assurance that the project will be in conformance with applicable state licensing requirements and, if the applicant is or plans to be certified under the medicaid or medicare program, with the applicable conditions of participation related to those programs.
>
> (4) The proposed project will promote continuity in the provision of health care, not result in an unwarranted fragmentation of services, and have an appropriate relationship to the service area's existing health care system.
>
> (5) There is reasonable assurance that the services to be provided through the proposed project will be provided in a manner that ensures safe and adequate care to the public to be served and in accord with applicable federal and state laws, rules, and regulations. The assessment of the conformance of a project to this criterion shall include but not be limited to consideration as to whether:
>
> (a) The applicant or licensee has no history, in this state or elsewhere, of a criminal conviction which is reasonably related to the applicant’s competency to exercise responsibility for the ownership or operation of a health care facility, a revocation of a license to practice a health profession, or a decertification as a provider of services in the medicare or Medicaid program because of failure to comply with applicable federal conditions of participation; or
>
> (b) If the applicant or licensee has such a history, whether the applicant has affirmatively established to the department’s satisfaction by clear, cogent and convincing evidence that the

> applicant can and will operate the proposed project for which the certificate of need is sought in a manner that ensures safe and adequate care to the public to be served and conforms to applicable federal and state requirements.

2.8 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.

2.9 Based on the above Findings of Fact and Conclusions of Law, the Presiding Officer determines that both the Alliance and Signature applications meet the criteria for CN set forth in WAC 246-310-210, WAC 246-310-220, WAC 246-310-230, and WAC 246-310-240. Following his WAC 246-310-240(1) analysis, the Presiding Officer concludes that the Alliance application is superior to the Signature application.

The CN Evaluation as an "Initiating Document"

2.10 In challenging the Program's evaluation, Signature provided a specific statement of the laws and issues involved and the grounds for its appeal of the Program's evaluation.[63] Signature argues the Program's evaluation is an "initiating document" and the Program may only amend it by following the applicable procedural rules.[64] *See* TR 602-606; *see also* WAC 246-10-202 and WAC 246-10-203. Unless it amends the initiating document under the applicable procedural rules, the Program is restricted to those issues contained in the initial evaluation. WAC 246-10-203. Signature argues that amending the document provides the applicant an opportunity to grant a continuance to allow the responding party to prepare a defense.[65]

2.11 Signature contends the issue is not the *de novo* standard of review–rather the issue is what claims can and cannot be considered in the *de novo* review.[66] Since it never raised any of its claims prior to the discovery or motions cutoff, Signature contends Alliance is prohibited from doing so now.

---

[63] See RCW 70.38.125(10) and WAC 246-310-610(1) and (2).

[64] "Initiating document" shall mean a written agency document which initiates action against a license holder or applicant for license or recipient of benefits and which creates the right to an adjudicative proceeding. It may be entitled a statement of charges, notice of intent to deny, order, or by any other designation indicating the action or proposed action to be taken. WAC 246-10-102

[65] Even if a CN evaluation is an "initiating document" it did not prohibit Signature or any party from requesting continuance. *See* Prehearing Order No. 4: Order Denying Motion for Continuance of the Hearing Date, issued June 17, 2016; *see also* WAC 246-10-403(3) (Continuances may be granted for good cause).

[66] *See* Signature's Closing Brief, pages 15-17.

The Program and Alliance disagree that they are restricted to issues in the "initiating document" as argued by Signature.[67]

2.12 Signature's characterization of the CN evaluation as an "initiating document" is incorrect, as it conflates the CN appeal procedure (a comparative review) with the Department of Health disciplinary procedure (an adversarial proceeding). *See DaVita v. Department of Health*, 137 Wn. App. 174, 185 (2007). The Court's holding in *DaVita* is instructive here. The Division Two Court of Appeals explained that a comparative review is not an adversarial proceeding, but a competitive one. *DaVita v. Department of Health*, 137 Wn. App. at 185. The burden of proof is not on the Program; it is upon each applicant to prove that its application meets the applicable criteria. The Presiding Officer must make factual findings on *all material issues*–including whether the applicant has met its burden. *DaVita,* at 137 Wn. App. at 185. (Emphasis added).

2.13 The CN application process is a detailed process, as the applicant(s) and competitors (interested and affected parties) participate throughout the application process. They participate in the public hearing[68] and provide arguments in support or opposing the applications. The applicants know what arguments or concerns exist throughout the application process. CN hearings do not resemble disciplinary proceedings, where one party is totally unaware of the issues until the party receives the "initiating document". The Presiding Officer

---

[67] *See* Program's Post-Hearing Opening Brief, pages 6-7; Alliance's Reply Brief, page 5.

[68] *See* WAC 246-310-180.

actually conducts a *de novo* review of the applications contained in the CN application record, considers all of the evidence, and then issues the agency's decision. *See Providence Medical Center Everett v. Department of Health*, No. 73454-7-I (July 5, 2016), WL 3660801 (Division One, 2016) (citing *DaVita v. Department of* Health, 137 Wn. App. 174, 181-182 2007)). As stated in Paragraph 2.2 above, the Presiding Officer may consider the Program's written analysis but is not required to defer to it. The Presiding Officer finds Signature's argument to be both incorrect and unpersuasive.

<u>Intervention in CN Adjudicative Proceedings</u>

2.14 Signature further contends Alliance did not request an adjudicative proceeding to contest the Program's evaluation and RCW 70.38.115(10)(b) limits Alliance's ability to intervene to the presentation of oral or written testimony or argument. The Presiding Officer may grant a petition for intervention at any time, upon a determination that the intervenor qualifies under any provision of the law and the intervention is in the interest of justice and will not impair the orderly and prompt conduct of the hearing. *See* RCW 34.05.443(1); *see also St. Joseph Hospital and Health Care Center v. Department of Health*, 125 Wn.2d 733, 742, (1995) (where the Washington Supreme Court ruled that competitors have standing in CN matters). Here the Presiding Officer signed an Order Granting Alliance's Petition to Intervene, in which Alliance was granted the right to intervene and fully participate as a part to the proceeding on April 11, 2016. Signature did

not contest this intervention Order. Given this ruling, Alliance's participation was not restricted in this matter to oral or written testimony or argument.

III. ORDER

Based on the foregoing Procedural History and Findings of Fact, and Conclusions of Law, it is **ORDERED:**

3.1 Alliance's CN application to establish a 120-bed psychiatric hospital at 1901 S. Union Avenue, Tacoma, Washington in the Pierce County planning area is **GRANTED.**

3.2 Signature's CN application to establish a 174-bed psychiatric hospital at 4100 S. 19th Street, Tacoma, Washington in the Pierce County planning area is **DENIED.**

3.3 In the alternative, Signature's CN application to establish a 153-bed psychiatric hospital at 4100 S. 19th Street, Tacoma, Washington in the Pierce County planning area is **DENIED.**

Dated this 28 day of September, 2016.

/s/
JOHN F. KUNTZ, Review Judge
Presiding Officer

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

For more information, visit our website at:
http://www.doh.wa.gov/PublicHealthandHealthcareProviders/HealthcareProfessionsandFacilities/Hearings.aspx