Figure 7

Certificate of Need Process for Surgery Operating Rooms

Up to six months prior to application for expedited, regular, or concurrent review, (but no later than thirty days before submitting application for expedited or regular review), applicant must submit letter of intent to the Department of Health (DOH) that: a) describes proposed services; b) estimates cost of proposed project; and c) identifies the service area. WAC 246-310-080, Sec (1), (2)

Within thirty days following the last day of the letter of intent submittal period, the DOH decides which proposed undertakings compete with other proposed undertakings. The DOH will notify applicants of competing undertakings. WAC 246-310-080, Sec (5)(b)

If the DOH decides that application submitted under concurrent review is not competing, it may convert the review to a regular review WAC 246-310-080, Sec (5)(c)

Emergency Review WAC 246-310-140

Expedited Review WAC 246-310-150

Concurrent Review WAC 246-310-120

Regular Review WAC 246-310-160

To be conducted when an immediate capital expenditure is required for a health care facility to maintain or restore basic and essential patient services. WAC 246-310-110, Sec (2)(a)(i)

For projects to correct deficiencies, research, acquisition of existing facility, pre-development activities. WAC 246-310-110, Sec (2)(b)

Applicant submits application and fee to state Department of Health's Certificate of Need Program office. RCW 70.38.115; WAC 246-310-160

Within fifteen working days, the DOH screens emergency, regular, or expedited review applications to ensure completeness and explicitness. WAC 246-310-090, Sec (2)(a)

If the DOH decides the application is incomplete, it reserves the right to screen application again upon receipt of the applicant's original response. WAC 246-310-090, Sec (2)(a)

Or the applicant can submit supplemental information and written request that the information be screened and the applicant be given further opportunity to submit supplemental information if the DOH requires it. WAC 246-310-090 (2)(c)(i)

Or applicant can submit supplemental information with written request that application review begin without the DOH notifying applicant as to adequacy of supplemental information. WAC 246-310-090 (2)(c)(ii)

Or applicant can submit written request that the application be reviewed without supplemental information. WAC 246-310-090 (2)(c)(iii)

Thirty-day public comment period (20 days for receiving comments, ten days for rebuttal. WAC 246-310-150

DOH completes final review and makes decision within fifteen working days after beginning of review period unless DOH extends final review period. WAC 246-310-140, Sec (2)

If a critical issue remains unresolved, DOH may request additional information from applicant. DOH may extend final emergency review period up to ten days after receiving applicant's written response. WAC 246-310-140, Sec (3)

Decision will come within twenty days after end of comment period, UNLESS DOH extends application period pending resolution of issues. WAC 246-310-150, Sec (2)

DOH issues Certificate of Need, permitting process may continue.

Competing health care providers can contest the Certificate of Need and file an appeal.

DOH denies Certificate of Need. NO NEW OPERATING ROOMS ALLOWED

If DOH denies Certificate of Need under emergency or expedited application review, applicant may appeal decision under WAC 246-310-610

For appeal process, refer to bottom row of chart

Eleven additional separate procedures and conditions for submission, withdrawal, and re-submission of application. WAC 246-310-090, Sec (2)-(4)

Interested parties must make a written request to the DOH for public hearing no later than fifteen days after a "notification of beginning of review" is published in a newspaper of general circulation. WAC 246-310-180, Sec (3)(b)

DOH determines need based on established formulae and criteria. WAC 246-310-270

For hospitals and Ambulatory Surgical Centers, first the DOH calculates existing capacity.

Assume capacity of one hospital operating room not dedicated to outpatient surgery is 92,250 minutes per year.

Based on forty four hours per week, fifty one weeks per year (allowing for five weekday holidays), 15% prep and clean time loss, 15% time loss for scheduling flexibility

Assume capacity of one operating room dedicated to ambulatory (outpatient) surgery is 68,850 minutes per year.

Same formula for hospital operating room, except 25% time loss for prep and clean, and scheduling is for a 37 ½ hour week

HOWEVER, when dedicated emergency operating rooms are excluded, emergency minutes should be excluded when calculating the need in an area. Also exclude cystoscopic and other special purpose rooms (e.g., open heart surgery) and delivery rooms.

Calculate the total annual capacity (in number of surgeries) of all *dedicated* outpatient operating rooms in the area. WAC 246-310-270, Sec (9)(a)(iii)

Calculate the total annual capacity (in number of minutes) of the remaining inpatient and outpatient operating rooms in the area

Use total annual capacity of remaining inpatient and outpatient operating rooms

Calculate future need by projecting the number of inpatient and outpatient surgeries performed within the hospital planning area during the third year of operation.

A geographic region delineated by the state DOH for planning health care facilities

Subtract capacity of dedicated outpatient operating rooms from forecasted number of outpatient surgeries

Where data are unavailable, assume one hundred minutes per inpatient and fifty minutes per outpatient surgery (exclude prep and clean time and is comparable to "billing minutes.")

Determine the average time per inpatient and outpatient surgery in planning area

Use the difference to calculate sum of inpatient and remaining outpatient room time.

Calculate the sum of inpatient and remaining outpatient operating room time needed in the third year of operation. WAC 246-310-270, Sec (9)(b)(iv)

Use sum of inpatient and remaining outpatient rooms needed in third year of operation

DOH determines net need. If the sum of inpatient and remaining outpatient operating room time needed in the third year of operation is less than the total annual capacity of the remaining inpatient and outpatient operating rooms in the area, divide difference by 94,250 minutes to obtain the area's surplus of operating rooms used for both inpatient and outpatient surgery. WAC 246-310-270, Sec (9)(c)(i)

If the sum of inpatient and remaining outpatient operating room time needed in the third year of operation is greater than the total annual capacity of the remaining inpatient and outpatient operating rooms in the area, subtract total annual capacity of the remaining inpatient and outpatient operating rooms in area from inpatient component of total operating room time needed in the third year of operation and divide by 94,250 minutes to obtain the area's shortage of inpatient operating rooms. WAC 246-310-270, Sec (9)(c)(ii)

Divide the outpatient component of the total operating room time needed in the third year of operation by 68,850 to obtain the area's shortage of dedicated outpatient operating rooms. WAC 246-310-270, Sec (9)(c)(ii)

DOH determines financial feasibility of proposed project. WAC 246-310-220

DOH determines if a proposed project fosters an acceptable or improved quality of health care. WAC 246-310-230

DOH determines if a proposed project will foster cost containment. WAC 246-310-240

DOH USES THIRTY-ONE ADDITIONAL CRITERIA AND SUB-CRITERIA TO ANALYZE NEED FOR AND FEASIBILITY OF PROPOSED PROJECT. WAC 246-310-210

DOH issues Certificate of Need. Permitting process may continue

DOH denies Certificate of Need. NO NEW OPERATING ROOMS ALLOWED

Competing health care providers can contest the Certificate of Need and file an appeal

If DOH denies Certificate of Need under regular or concurrent application review, applicant may appeal decision under WAC 246-310-610

Applicant denied Certificate of Need must file written application for adjudication within twenty eight days of notice of denial. WAC 246-310-610,

Appeal proceeding governed by Administrative Procedure Act (RCW 34.05, WAC 246-310, and WAC 246-08)

Any health care facility or health maintenance organization that provides services similar to applicant's, is located within applicant's health service area, and testified or submitted evidence during public hearing, will be provided opportunity to present testimony. WAC 246-310-610, Sec (4)

Adjudicative proceeding will render decision on appeal. **Total time for administrative appeal: 7-10 months**.

Certificate of Need issued on administrative appeal. Permitting process may continue.

Certificate of Need denial upheld on administrative appeal

Applicant can appeal CON denial to Superior Court. Must file petition within thirty days after adjudicative appeal denial.

Oral arguments are conducted based on the administrative record. No new evidence allowed.

Superior Court issues final decision. No further appeal allowed under current law. **Total time for judicial appeal: 7-12 months.**

CON Application Fees (WAC 246-310-990)

Ambulatory Surgical Centers - $12,964
Amendments to Issued Certificates of Need - $8,171
Emergency Review - $5,259
Exemption Requests
- -Continuing Care Retirement Communities and Health Maintenance Organizations - $5,259
- -Bed Banking/Conversions - $856
- -Determinations of Nonreviewability - $1,222
- -Hospice Care Center - $1,101
- -Nursing Home Capital Threshold under RCW 70.38.105 (4)(e) (Excluding Replacement/Renovation Authorizations) - $1,101
- -Rural Hospital/Rural Health Care Facility - $1,101

Extensions
- -Bed Banking - $489
- -Certificate of Need/Replacement Renovation Authorization Validity Period- $489

Home Health Agency - $15,654
Hospice Agency - $13,942
Hospice Care Center - $8,171
Hospital (Excluding Transitional Care Units-TCUs, Ambulatory Surgical Center, Home Health, Hospice, and Kidney Disease Treatment Centers) - $25,684
Kidney Disease Treatment Centers - $15,900
Nursing Homes (Including CCRCs and TCUs) - $29,354.