

## WSR 22-20-109

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed October 5, 2022, 9:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-02-008.

Title of Rule and Other Identifying Information: WAC 246-310-290 Hospice services—Standards and need forecasting method. The department of health (department) is proposing changes that intend to provide a more accurate measurement of hospice service utilization using reported admissions in calculating need within Washington communities.

Hearing Location(s): On November 10, 2022, at 11:00 a.m. Department of health will be holding a virtual public hearing. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_CM1LSct\\_Ri6OgE5bRfVMNw](https://us02web.zoom.us/webinar/register/WN_CM1LSct_Ri6OgE5bRfVMNw). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: November 17, 2022.

Submit Written Comments to: Eric Hernandez, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, [CNRulemaking@doh.wa.gov](mailto:CNRulemaking@doh.wa.gov), by November 10, 2022.

Assistance for Persons with Disabilities: Contact Eric Hernandez, phone 360-236-2956, TTY 711, email [CNRulemaking@doh.wa.gov](mailto:CNRulemaking@doh.wa.gov), by November 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to WAC 246-310-290 allow for a more accurate measurement of hospice service utilization within Washington communities using reported admissions. The current rule under-reports capacity within the various planning areas, which results in under-calculation of numeric need throughout Washington communities. This proposed change to the methodology calculation will achieve a more accurate measure of utilization to reflect a truer calculation of numeric need for hospice services. The hospice community requested an update to the hospice methodology calculation. This will ensure an accurate representation of need for future application cycles and keep the methodology application consistent across review cycles. The initial CR-101 filed was intended to work on the entire chapter. Remaining items not covered in this CR-102, including petitions, will have a new CR-101 filed to continue that work.

Reasons Supporting Proposal: The goals and objectives of chapter 70.38 RCW are to "promote, maintain and assure the health of all citizens in the state, to provide accessible health services, health manpower, health facilities, and other resources while controlling excessive increases in costs." The statute states that health planning "should be concerned with public health and health care financing, access and quality, recognizing their close interrelationship and emphasizing cost controls of health services, including cost effectiveness and cost-benefit analysis."

The proposed rule change allows for more accurate measurement and projection of hospice utilization within the state, which results in a more accurate numeric need calculation, and helps to ensure enough hospice providers are available in local communities.

Statutory Authority for Adoption: RCW 70.38.115, 70.38.135, and 43.70.040.

Statute Being Implemented: RCW 70.38.115, 70.38.135, and 43.70.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Eric Hernandez, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2956.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Eric Hernandez, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2956, TTY 711, email CNRulemaking@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: WAC 246-310-290 details the methodology to calculate need in a planning area which is one part of the information used in granting a certificate of need.

Scope of exemption for rule proposal:

Is fully exempt.

October 5, 2022  
Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

## OTS-4010.1

AMENDATORY SECTION (Amending WSR 18-19-051, filed 9/14/18, effective 10/15/18)

**WAC 246-310-290 Hospice services—Standards and need forecasting method.** The following rules apply to any in-home services agency licensed or an applicant intending to become licensed to provide hospice services, and intending to become a medicare certified or medicaid contracted service provider in a designated planning area.

(1) The definitions in this subsection apply throughout this section unless the context clearly indicates otherwise:

(a) "ADC" means average daily census and is calculated by:

(i) Multiplying projected annual hospice agency admissions by the most recent average length of stay in Washington, based on the most recent data reported to the Centers for Medicare and Medicaid Services (CMS) to derive the total annual days of care;

(ii) Dividing the total calculated in (a)(i) of this subsection by three hundred sixty-five (days per year) to determine the ADC.

(b) "Average length of stay" means the average covered days of care per person for Washington state as reported by CMS.

(c) "Base year" means the most recent calendar year for which hospice survey data is available as of September 30th of each year.

(d) "CMS" means the Centers for Medicare and Medicaid Services.

(e) "Current supply of hospice providers" means all providers of hospice services that have received certificate of need approval to provide services within a planning area. State licensed only and volunteer hospices are excluded from the current supply of hospice providers.

(f) "Hospice services" means symptom and pain management provided to a terminally ill person, and emotional, spiritual and bereavement support for the terminally ill person and family in a place of temporary or permanent residence provided under the direction of an interdisciplinary team composed of at least a registered nurse, social worker, physician, spiritual counselor, and a volunteer.

(g) "OFM" means the Washington state office of financial management.

(h) "Planning area" or "service area" means an individual geographic area designated by the department for which hospice need projections are calculated. For the purposes of hospice services, planning area and service area have the same meaning.

(i) "Projection year" means the third calendar year after the base year. For example, reviews using 2016 survey data as the base year will use 2019 as the projection year.

(2) The department will review a hospice application using the concurrent review cycle described in subsection (3) of this section, except when the sole hospice provider in the service area ceases operation. Applications to meet this need may be accepted and reviewed in accordance with the regular review process described in WAC 246-310-110 (2) (c).

(3) Applications must be submitted and reviewed according to Table A:

Table A

		Application Submission Period			Department Action	Application Review Period		
Concurrent Review Cycle	Letters of Intent Due	Receipt of Initial Application	End of Screening Period	Applicant Response	Beginning of Review	Public Comment	Rebuttal	Ex Parte Period
<b>Cycle 1</b> (Chelan, Douglas, Clallam, Clark, Skamania, Cowlitz, Grant, Grays Harbor, Island, Jefferson, King, Kittitas, Klickitat, Okanogan, Pacific, San Juan, Skagit, Spokane, and Yakima).	Last working day of <b>November</b> of each year.	Last working day of <b>December</b> of each year.	Last working day of <b>January</b> of each year.	Last working day of <b>February</b> of each year.	<b>March 16</b> of each year or the first working day thereafter.	<b>45-Day</b> public comment period (including public hearing). Begins <b>March 17</b> or the first working day thereafter.	<b>30-Day</b> rebuttal period. Applicant and affected person response to public comment.	<b>75-Day</b> ex parte period. Department evaluation and decision.
<b>Cycle 2</b> (Adams, Asotin, Benton, Columbia, Ferry, Franklin, Garfield, Kitsap, Lewis, Lincoln, Mason, Pend Oreille, Pierce, Snohomish, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, and Whitman).	Last working day of <b>December</b> of each year.	Last working day of <b>January</b> of each year.	Last working day of <b>February</b> of each year.	Last working day of <b>March</b> of each year.	<b>April 16</b> of each year or the first working day thereafter.	<b>45-Day</b> public comment period (including public hearing). Begins <b>April 17</b> or the first working day thereafter.	<b>30-Day</b> rebuttal period. Applicant and affected person response to public comment.	<b>75-Day</b> ex parte period. Department evaluation and decision.

(4) Pending certificate of need applications. A hospice service application submitted prior to the effective date of these rules will be reviewed and action taken based on the rules that were in effect on the date the application was received.

(5) The department will notify applicants fifteen calendar days prior to the scheduled decision date if it is unable to meet the decision deadline on the application(s). In that event, the department will establish and commit to a new decision date.

(6) When an application initially submitted under the concurrent review cycle is deemed not to be competing, the department may convert the review to a regular review process.

(7) Current hospice capacity will be determined as follows:

(a) For hospice agencies that have operated in a planning area for three years or more, current hospice capacity is calculated by determining the average number of unduplicated admissions for the last three years of operation;

(b) For hospice agencies that have operated (or been approved to operate) in a planning area for less than three years, an ADC of thirty-five and the most recent Washington average length of stay data will be used to calculate assumed annual admissions for the hospice agency as a whole for the first three years to determine current hospice capacity. If a hospice agency's reported admissions exceed an ADC of thirty-five, the department will use the actual reported admissions to determine current hospice capacity;

(c) For a hospice agency that is no longer in operation, the department will use the historical three-year admissions to calculate the statewide use rates, but will not use the admissions to calculate planning area capacity;

(d) For a hospice agency that has changed ownership, the department will use the historical three-year admissions to calculate the statewide use rates, and will use the admissions to calculate planning area capacity.

(8) Need projection. The following steps will be used to project the need for hospice services.

(a) Step 1. Calculate the following two statewide predicted hospice use rates using department of health survey and vital statistics death data:

(i) The percentage of patients age sixty-five and over who will use hospice services. This percentage is calculated by dividing the average number of unduplicated admissions over the last three years for patients sixty-five and over by the average number of past three years statewide total deaths age sixty-five and over.

(ii) The percentage of patients under sixty-five who will use hospice services. This percentage is calculated by dividing the average number of unduplicated admissions over the last three years for patients under the age of sixty-five by the average number of past three years statewide total deaths under sixty-five.

(b) Step 2. Calculate the average number of total resident deaths over the last three years for each planning area by age cohort.

(c) Step 3. Multiply each hospice use rate determined in Step 1 by the planning areas average total resident deaths determined in Step 2, separated by age cohort.

(d) Step 4. Using the projected patients calculated in Step 3, calculate a use rate by dividing projected patients by the three-year historical average population by county. Use this use rate to determine the potential volume of hospice use by the projected population

by the two age cohorts identified in Step 1, (a)(i) and (ii) of this subsection using OFM data.

(e) Step 5. Combine the two age cohorts. (~~Subtract~~)

(i) Calculate the most recent three-year average hospice capacity in each planning area using hospice agency admissions. Subtract the calculated hospice capacity from the projected volumes calculated in Step 4 to determine the number of projected admissions beyond the planning area capacity.

(ii) For hospice agencies qualified under subsection (7)(b) of this section, and whose recent three-year average hospice capacity is below an ADC of 35, replace any reported admissions with default admissions for each year over which the three-year average is calculated.

(f) Step 6. Multiply the unmet need from Step 5 by the statewide average length of stay as determined by CMS to determine unmet need patient days in the projection years.

(g) Step 7. Divide the unmet patient days from Step 6 by 365 to determine the unmet need ADC.

(h) Step 8. Determine the number of hospice agencies in the planning areas that could support the unmet need with an ADC of thirty-five.

(9) If the department becomes aware of a facility closure fifteen calendar days or more prior to the letter of intent submission period, the department will update the methodology for the application cycle. If a closure occurs fewer than fifteen calendar days prior to the letter of intent submission period, the department will not update the methodology until the next year.

(10) In addition to demonstrating numeric need under subsection (7) of this section, applicants must meet the following certificate of need requirements:

(a) Determination of need under WAC 246-310-210;

(b) Determination of financial feasibility under WAC 246-310-220;

(c) Criteria for structure and process of care under WAC 246-310-230; and

(d) Determination of cost containment under WAC 246-310-240.

(11) To conduct the superiority evaluation to determine which competing applications to approve, the department will use only the criteria and measures in this section to compare two or more applications to each other.

(a) The following measures must be used when comparing two or more applications to each other:

(i) Improved service to the planning area;

(ii) Specific populations including, but not limited to, pediatrics;

(iii) Minimum impact on existing programs;

(iv) Greatest breadth and depth of hospice services; and

(v) Published and publicly available quality data.

(b) An application will be denied if it fails to meet any criteria under WAC 246-310-210, 246-310-220, 246-310-230, or 246-310-240 (2) or (3).

(12) The department may grant a certificate of need for a new hospice agency in a planning area where there is not numeric need.

(a) The department will consider if the applicant meets the following criteria:

(i) All applicable review criteria and standards with the exception of numeric need have been met;

(ii) The applicant commits to serving medicare and medicaid patients; and

(iii) A specific population is underserved; or

(iv) The population of the county is low enough that the methodology has not projected need in five years, and the population of the county is not sufficient to meet an ADC of thirty-five.

(b) If more than one applicant applies in a planning area, the department will give preference to a hospice agency that proposes to be physically located within the planning area.

(c) The department has sole discretion to grant or deny application(s) submitted under this subsection.

(13) Any hospice agency granted a certificate of need for hospice services must provide services to the entire county for which the certificate of need was granted.

(14) Failure to operate the hospice agency as approved in the certificate of need may be a basis for revocation or suspension of a hospice agency's certificate of need, or other appropriate action.

[Statutory Authority: RCW 70.38.135 and 70.38.115. WSR 18-19-051, § 246-310-290, filed 9/14/18, effective 10/15/18. Statutory Authority: Chapters 70.127 and 70.38 RCW. WSR 03-07-096, § 246-310-290, filed 3/19/03, effective 4/19/03.]