



STATE OF ILLINOIS

OFFICE OF THE AUDITOR GENERAL

PROGRAM AUDIT OF

THE ILLINOIS
HEALTH FACILITIES
PLANNING BOARD

SEPTEMBER 2001

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*To the Legislative Audit Commission, the Speaker and
Minority Leader of the House of Representatives, the
President and Minority Leader of the Senate, the
members of the General Assembly, and the Governor:*

This is our report of the Program Audit of the Illinois Health Facilities Planning Board.

The audit was conducted pursuant to Public Act 91-0782, which became law on June 9, 2000. This audit was conducted in accordance with generally accepted government auditing standards and the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310.

The audit report is transmitted in conformance with Section 3-14 of the Illinois State Auditing Act.

A handwritten signature in black ink, appearing to read "William G. Holland".

WILLIAM G. HOLLAND
Auditor General

Springfield, Illinois
September 2001

REPORT DIGEST

Program Audit of

THE ILLINOIS HEALTH FACILITIES PLANNING BOARD

Released: September 2001



State of Illinois
Office of the Auditor General

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SYNOPSIS

Established in 1974, the Illinois Health Facilities Planning Board was created to help control rising health care costs by issuing permits or certificates of need (CON). These permits allow health facilities to modify or construct facilities and to acquire major medical equipment. In June 2000, Public Act 91-0782 amended the Health Facilities Planning Act (20 ILCS 3960) adding a sunset date for the Act and directing the Auditor General's Office to conduct an audit of the Health Facilities Planning Board. The Public Act asked us to determine whether the Board:

- Demonstrates that the CON process is successful;
- Reflects cost savings in its annual reports;
- Follows its adopted rules and procedures; and
- Awards and denies certificates of need consistently.

The Planning Board has done a number of studies and reports that consider elements of effectiveness but has not done an overall evaluation of the program's effectiveness. The only tangible cost savings the Health Facilities Planning Board has identified in its annual reports is the difference between dollars proposed and dollars approved. Because some of these projects are not denied by the Board but are withdrawn by the applicant and some applicants reapply and are later approved, the cost savings reported in annual reports may be overstated.

In the area of following rules and procedures we found:

- That State Agency Reports, prepared by staff at the Department of Public Health, generally provide an objective evaluation of proposed projects by applying administrative rules, however we identified a few instances when criteria were not applied consistently.
- Examples where the Planning Board did not consistently follow the administrative rules related to deferrals.
- Some project review criteria in the administrative rules relate closely to one another so that one negative criteria may domino or carry over into other criteria causing them to be negative as well.

In the area of awarding and denying certificates of need consistently we found:

- Instances where we questioned the consistency of the Board's actions.
- Cases where the Planning Board's decision was not consistent with the State Agency Report analysis.

REPORT CONCLUSIONS

Established by the Health Facilities Planning Act (20 ILCS 3960) in 1974, the Health Facilities Planning Board was created to help control rising health care costs by issuing permits or certificates of need. These permits allow health facilities to modify or construct facilities and to acquire major medical equipment in order to improve their services to health care consumers.

In June 2000, Public Act 91-0782 made several changes to the Health Facilities Planning Act and other acts that affected the Health Facilities Planning Board. Among the changes were requiring the Auditor General to conduct this audit of the Board; limiting the projects which would be reviewed by increasing the capital expenditures dollar threshold and excluding non-clinical service areas from review; and including a clause to repeal the Health Facilities Planning Act on July 1, 2003.

Determining whether a certificate of need (CON) program is effective is a difficult task. The Planning Board has done a number of studies and reports that consider elements of effectiveness but has not done an overall evaluation of the program's effectiveness. The Planning Board should make every effort to analyze its effectiveness and make and seek changes to improve the effect of the Illinois health planning process.

Health care research literature includes many evaluations of health planning and certificate of need programs. Although a few studies show that health planning and CON programs may have some cost saving potential, studies did not consider or showed little evidence that programs have positive effects on access or quality of care.

The only tangible cost savings the Health Facilities Planning Board has identified in its annual reports is the difference between dollars proposed and dollars approved. Because some of these projects are not denied by the Board but are withdrawn by the applicant and some applicants reapply and are later approved, the cost savings reported in annual reports may be overstated. However, it should be noted that the requirement for the Board to do an annual report has been eliminated.

Staff at the Department of Public Health review certificate of need applications and prepare State Agency Reports that generally provide an objective evaluation of proposed projects by applying administrative rules. However, we identified a few instances when criteria were not applied consistently. We also found that some project review criteria in the administrative rules relate closely to one another so that one negative criteria may domino or carry over into other criteria causing them to be negative as well. Because State Agency Reports are one of the primary

sources that the Board uses in making its decision, all criteria should be applied consistently and be adjusted to minimize this domino effect.

The majority of FY00 projects that we analyzed complied with the timeliness standards in the Planning Board's administrative rules. However, Illinois' review period was the 8th lengthiest compared to the 33 other states for which data were available. In addition, the rules include elements that can lengthen the process.

The Planning Board did not consistently follow the administrative rules related to deferrals. Our testing identified several examples of projects being deferred beyond what was allowable in the rules. The Board has also voted to defer projects even though nothing in the rules specifically allows them to do so. If the Board does not offer these deferrals to all projects, it could be viewed as giving one project an unfair advantage over other projects.

We identified some instances where we questioned the consistency of the Board's actions. Because the Board approves the vast majority of projects it considers, there are relatively few denied projects that we could identify and compare to other similar approved projects to consider consistency. However, we analyzed projects in several ways and identified six instances for which we questioned the consistency. One of the instances involved three similar projects that we believed were treated inconsistently but were all eventually approved. These raise particular concern for two reasons. First, the approval process was long and difficult for the involved applicants and second, all the projects were approved and capital construction was not limited.

We also identified a few cases where the Planning Board's decision was not consistent with the State Agency Report analysis. The Planning Board should work to assure consistency and should consider doing a statement of findings that summarizes the reasons for their decision to approve or deny a project.

BACKGROUND

The Health Facilities Planning Act (20 ILCS 3960) was implemented to establish a procedure designed to reverse the trends of increasing costs of health care resulting from unnecessary construction or modification of health care facilities. The Act provides that the procedure shall represent an attempt by the State of Illinois to improve the financial ability of the public to obtain necessary health services, and to establish an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public.

PROGRAM AUDIT OF THE HEALTH FACILITIES PLANNING BOARD

In June 2000, Public Act 91-0782 made several changes to the Health Facilities Planning Act and other acts that affected the Health Facilities Planning Board. Changes included:

- Raising the dollar threshold for review;
- Excluding non-clinical service areas from review;
- Including a provision to sunset the Act on July 1, 2003;
- **Including ethics laws requirements; and**
- Prohibiting ex parte communications.

The Act also required the Auditor General's Office to conduct an audit of the Health Facilities Planning Board (Planning Board). The Act asked us to determine:

- Whether the Planning Board can demonstrate that the certificate of need process is successful in controlling health care costs, allowing public access to necessary health services, and guaranteeing the availability of quality health care to the general public;
- Whether the Planning Board is following its adopted rules and procedures;
- Whether the Planning Board is consistent in awarding and denying certificates of need; and
- Whether the Planning Board's annual reports reflect a cost savings to the State. (Pages 2-6)

The Planning Board

The Planning Board is composed of 15 voting members appointed by the Governor with Senate confirmation. The Board's members include eight consumer representatives and seven industry members, one each representing the following:

- Commercial Health Insurance,
- Hospitals,
- Hospital Management,
- Professional Nursing,
- Physicians in Active Practice,
- Skilled Nursing or Intermediate Care Facility Management, and
- Ambulatory Surgical Treatment Centers.

The Planning Board provides for its own organization and procedures, including the selection of a Chairman and other officers as deemed necessary. The Director of the Department of Public Health, with concurrence of the Planning Board, names the Executive Secretary of the

Planning Board. The Executive Secretary's position was vacant for most of the time we were doing this audit. The Department of Public Health also provides administrative and staff support for the Planning Board.

To be approved a project must receive at least eight affirmative votes, regardless of how many members of the Board are present.

The Planning Board meets at least once each quarter or as often as the Chairman of the Planning Board deems necessary or upon request of a majority of the members. To be approved a project must receive at least eight affirmative votes, regardless of how many members of the Board are present. (Pages 6-7)

Projects Reviewed

The Health Facilities Planning Act details the types of projects requiring review. A transaction is subject to review and requires a permit if the transaction meets one of the following criteria:

- Requires a total capital expenditure in excess of the capital expenditure minimum (\$6 million in June 2000);
- Substantially changes the scope or changes the functional operation of the facility;
- Results in the establishment of a health care facility;
- Changes the bed capacity of a health care facility by increasing the total number of beds or by distributing beds among various categories of service or by relocating beds from one physical facility or site to another by more than ten beds or more than ten percent of total bed capacity over a two year period;
- Involves a change of ownership; or
- Results in the discontinuation of an entire health care facility or category of service.

In some instances, a health facility may be granted an exemption which keeps them from going through the CON process. Again, the administrative code details the types of transactions which are eligible for an exemption and the procedural requirement for receiving an exemption.

The Planning Board approved 85 percent of the projects that it reviewed in Fiscal Year 2000. Digest Exhibit 1 shows the number and dollar amount of projects approved during Fiscal Year 2000. (Page 11)

Digest Exhibit 1 PLANNING BOARD PROJECTS NUMBER PROCESSED AND PERCENT APPROVED Fiscal Year 2000		
	# of <u>Applications</u>	\$ (in millions) <u>of Applications</u>
Total	130	\$853
Number Approved	111	\$754
Percent Approved	85%	88%
Source: Health Facilities Planning Board Data.		

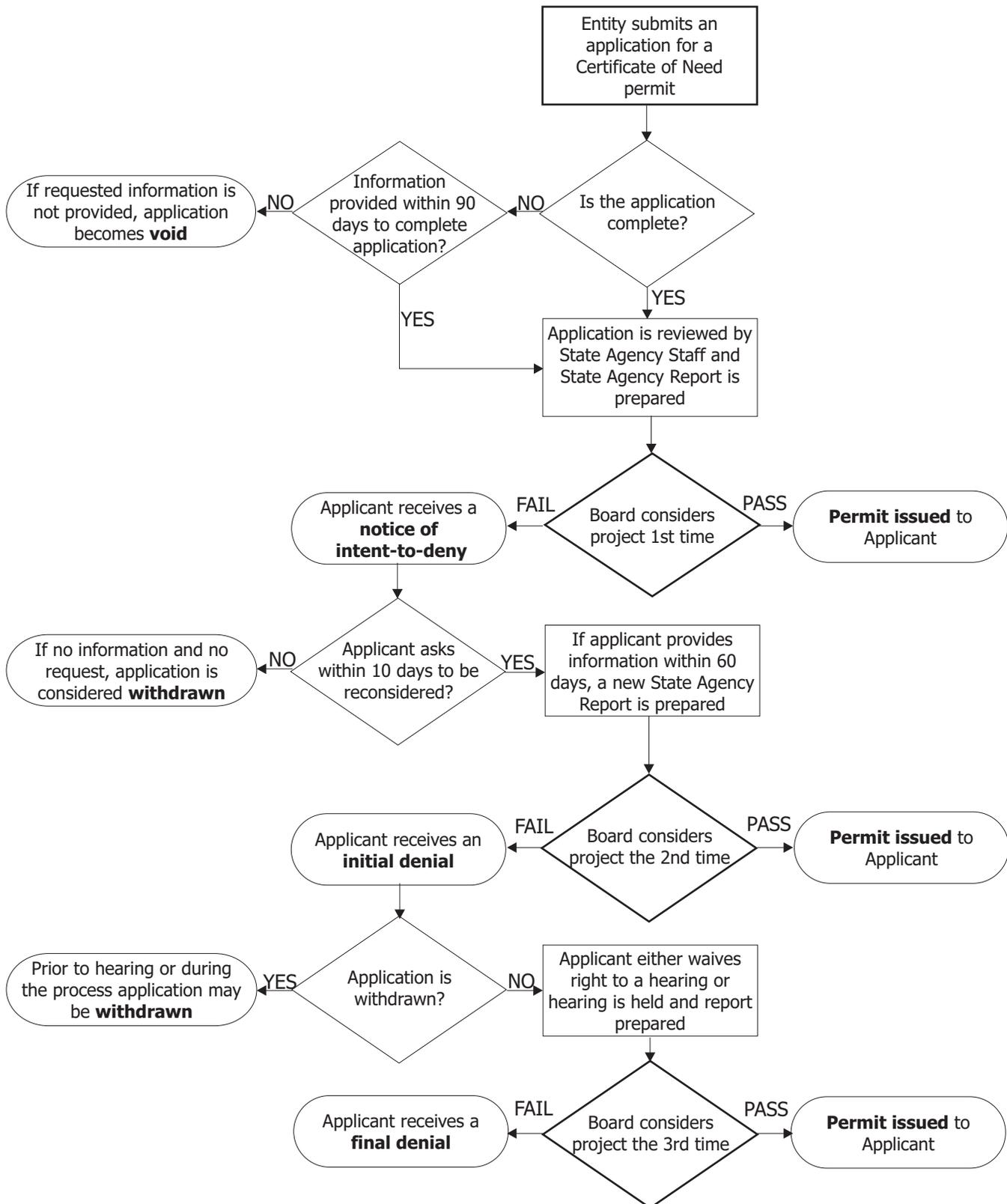
The Review Process

The following section along with the flowchart in Digest Exhibit 2 help to explain how the review process works. The process begins when a health facility applies for a CON permit by submitting an application and paying the initial application fee of \$700 to the Department of Public Health. The application is reviewed by Public Health and the application fee is deposited into the Health Facilities Planning Fund. The total application fee is assessed based on the cost of the project and ranges between \$700 and \$100,000.

Ten working days are allowed for State agency staff at Public Health to perform a completeness review on the health facility's application. If the application is incomplete, the applicant receives notice from Public Health and is given 90 days to provide additional information to complete the application. If the applicant does not provide the requested information within this timeframe the application becomes void. If the additional information is provided to complete the application, the applicant receives notice and a hearing date is scheduled with the Planning Board.

Once an application is deemed complete and before the project is considered by the Board there is an opportunity for a public hearing. Notice for a possible hearing is published in a general circulation newspaper in the area or community to be affected. Any interested party can request a public hearing. If a hearing is requested, it is held in the area where the proposed project is to occur. Interested parties can present their views or arguments in writing or orally, and a record of the testimony is sent to the Board to be considered before making a decision.

Digest Exhibit 2
CERTIFICATE OF NEED PROCESS FLOWCHART



Source: OAG analysis of Planning Board Process.

PROGRAM AUDIT OF THE HEALTH FACILITIES PLANNING BOARD

The CON application review is done by State agency staff at Public Health. A reviewer reads the application and does analysis to determine whether the facility meets or does not meet the various criteria set forth in the State's administrative rules. Staff prepare an analysis referred to as the State Agency Report which addresses the individual criteria.

After the application review process is completed, a copy of the State Agency Report, complete application, and public hearing information are sent to each of the Planning Board members. At the Planning Board meeting, usually with the applicant present, the Board considers the project and votes on whether it should be approved. A motion is made to approve a project with eight affirmative votes needed to issue a permit. If the project is approved, the CON permit is issued to the applicant. Failure of the project to meet one or more review criteria does not prohibit members of the Board from voting for approval. During the Board consideration process there are provisions to allow consideration of the application to be deferred.

If the project fails to receive eight votes, the applicant receives a notice of intent-to-deny. After the notice, the applicant has 10 working days to request to appear before the Planning Board or submit additional information. If the applicant waives the right to appeal the intent-to-deny or takes no action, the application is considered withdrawn. However, if the applicant elects to appear before the Planning Board, the Board will reconsider the application. If the applicant wants to submit additional information for the Board to consider, they have 60 days to provide the information. Upon receiving the information, Public Health has 60 days to review the information and prepare a supplemental report.

On a project's second consideration, if the Planning Board approves the application, the CON permit is issued to the applicant. If the application is denied a second time, the applicant will be issued a denial of an application for permit. The applicant has 30 days to request an Administrative Hearing at which a Hearing Officer considers the case and issues a recommendation. After the hearing, the Planning Board will vote and issue its final decision. If the Planning Board issues a final denial, the only option left is for the applicant to appeal the decision in the Circuit Court. (Pages 7-10)

BOARD EFFECTIVENESS

Determining whether a certificate of need program is effective is a difficult task.

Determining whether a certificate of need (CON) program is effective is a difficult task. The Planning Board has done a number of studies and reports that consider elements of effectiveness but has not done an overall evaluation of the program’s effectiveness. The Planning Board should make every effort to analyze its effectiveness and make and seek changes to improve the effect of the Illinois health planning process.

Health care research literature includes many evaluations of health planning and certificate of need programs. Although a few studies show that health planning and CON programs may have some cost saving potential, studies did not consider or showed little evidence that programs have positive effects on access or quality of care. (Page 15)

Cost Savings in Annual Reports

The only tangible cost savings the Health Facilities Planning Board has identified in its annual reports is the difference between dollars proposed and dollars approved. Because some of these projects are not denied by the Board but are withdrawn by the applicant and some applicants reapply and are later approved, the cost savings reported in annual reports may be overstated. However, it should be noted that the requirement for the Board to do an annual report has been eliminated.

The only tangible cost savings the Health Facilities Planning Board has identified in its annual reports is the difference between dollars proposed and dollars approved.

The Board defines cost savings as disallowed capital expenditures. This definition gives rise to some concerns about the legitimacy of the cost savings which are discussed below. As shown in Digest Exhibit 3, the Board reported \$489 million in disallowed proposed expenditures between Fiscal Years 1996 and 2000. These disallowed expenditures are due to project withdrawals, denials, or cost reductions in approved

Digest Exhibit 3				
BREAKDOWN OF REPORTED COST SAVINGS				
Fiscal Years 1996 to 2000 (\$s in millions)				
<u>Fiscal Year</u>	<u>Withdrawn</u>	<u>Denied</u>	<u>Cost Reductions</u>	<u>Total Amount Not Approved</u>
1996	\$38.2	\$26.8	\$3.5	\$68.5
1997	\$53.3	0	\$4.3	\$57.6
1998	\$210.0	0	\$11.0	\$221.0
1999	\$39.3	\$.3	\$3.6	\$43.2
2000	\$78.8	\$5.2	\$14.9	\$98.9
Totals	\$419.6	\$32.4*	\$37.3	\$489.2*

Note: * Does not add due to rounding.
 Source: Planning Board Data Summarized by OAG.

projects.

The Board counts withdrawn projects as costs savings even if an application is submitted but then withdrawn before a State Agency Report is prepared. For example, in FY98 a project for \$130 million was submitted but then withdrawn because of the applicant’s pending change in ownership. The project was withdrawn prior to preparation of a State Agency Report and the applicant did not appear before the Board. The Board’s annual report includes this in their total amount disallowed.

The Board’s measure of cost savings also does not account for projects that were withdrawn or denied and then reapply later. Of the reported \$489 million savings over five years, \$452 million resulted from projects that were withdrawn or denied. Of this \$452 million, we identified \$126 million (28%) of projects that were withdrawn or were denied and were later approved under a different project number. (Pages 16-18)

Improving Effectiveness

As part of our audit work we met with representatives of the health care industry to get their opinions on the Planning Board and its effectiveness. Some issues raised in those discussions and in our analyses may be important for the Board or the General Assembly to consider. The topical areas are shown in Digest Exhibit 4 and are discussed in more detail in Chapter Two of the report. (Pages 22-29)

There are some areas of Illinois’ program where changes could be considered to improve effectiveness.

Digest Exhibit 4 AREAS TO CONSIDER IMPROVING EFFECTIVENESS
Assuring a Level Playing Field Reviewing Financial Viability Considering Redundancy with Licensing Reviewing Discontinuation Using Permits with Conditions Assuring Sufficient Volumes Considering Excess Capacity
Source: OAG Analysis.

We made two recommendations concerning the effectiveness of the Health Facilities Planning Board. First, we recommended that the Board assure that when conditions are required of applicants, that those conditions relate to the projects being considered and comply with the Health Facilities Planning Act. (Recommendation Number 1, Page 26) Second, we recommended that the Board and State agency

staff at Public Health take every effort to analyze their effectiveness and to make changes to improve effectiveness. This may include working with consumers, health care payors, health research groups, health care

providers, health care associations, and members of the General Assembly to be certain that the Illinois health planning process serves the needs of the people of Illinois. (Recommendation Number 2, Page 29)

BOARD RULES AND PROCEDURES

State Agency Reports generally provide an objective evaluation of proposed projects by applying administrative rules.

State Agency Reports generally provide an objective evaluation of proposed projects by applying administrative rules. However, we identified a few instances when criteria were not applied consistently. While these inconsistencies were by and large minor in nature, State Agency Reports are one of the primary sources that the Board uses in making its decision and all criteria should be applied consistently. A full discussion of the Board's compliance with rules and procedures is in Chapter Three of the full report. (Pages 36-41)

The majority of FY00 projects that we analyzed complied with the timeliness standards in the Planning Board's administrative rules. However, Illinois' review period was the 8th lengthiest compared to the 33 other states for which data were available. In addition, the rules include elements that can lengthen the process. During FY00, it took an average of 141 days from application submission until the Board's final action. The State Agency completeness review took an average of 16 days. From the time the application was deemed complete by the State Agency to the Board's final action was 125 days. (Pages 33-36)

To address the inconsistencies that we identified, we recommended that State agency staff at the Department of Public Health assure that evaluation criteria are applied consistently in the projects that they review and the State Agency Reports that they prepare. (Recommendation Number 3, Page 40)

The Domino Effect

Several review criteria in the administrative rules relate closely to one another. If one section receives a negative in the State Agency Report, the negative may carry over into other criteria causing them to be negative. This generally results when there is a failure to establish need for the project. The opposite effect also occurs when the applicant establishes need for the project. This domino effect occurs regularly and can make the State Agency Report look better or worse than it really is. We recommended that the Board examine their review criteria and make adjustments to the existing criteria or eliminate duplicative criteria to minimize the domino effect. (Recommendation Number 4, Page 43)

Project Deferrals

The Board did not consistently follow the administrative rules related to deferrals. Our testing identified several examples of projects being deferred beyond what was allowable in the rules. The Board has also voted to defer projects even though nothing in the rules specifically allows them to do so. If the Board does not offer these deferrals to all projects, it could be viewed as giving one project an unfair advantage over other projects. We recommended that the Board assure that deferrals are used consistently by assuring that the administrative rules are followed and that applicants are given consistent and fair consideration. (Recommendation Number 5, Page 45)

CONSISTENCY OF BOARD DECISIONS

We identified some instances where we questioned the consistency of the Board's actions. Because the Board approves the vast majority of projects it considers, there are relatively few denied projects that we could identify and compare to other similar approved projects to consider consistency. We analyzed projects in several ways and identified six instances for which we questioned the consistency. One of the instances involved three similar projects that we believed were treated inconsistently but were all eventually approved. These raise particular concern for two reasons. First, the approval process was long and difficult for the involved applicants and second, all the projects were approved and capital construction was not limited. A full discussion of Board consistency is in Chapter Four of the full report.

In our review of projects that come before the Board, we questioned whether the Board was always consistent in awarding and denying certificates of need. We identified similar projects that received different outcomes from the Board. We defined similar projects as those in the same category of service with most being in the same planning area or in an adjacent geographic location. After examining the State Agency Reports and the Board meeting transcripts, it was unclear why some projects were denied while other similar projects were approved. The Board does not issue a summary statement that details their findings or reasons for awarding or denying certificates of need. (Pages 47-60)

We tested the Board's consistency in awarding and denying CON applications in four ways. We examined litigated cases to see if any of the plaintiffs contesting the issuance of a permit had a similar project denied by the Board. Second, we examined projects that came before the Board in FY00 and were not approved. For these projects, we examined similar projects that were approved to see if the denied projects were treated consistently. Third, we performed this same type of analysis looking at

In our review of projects that come before the Board, we questioned whether the Board was always consistent in awarding and denying certificates of need.

projects that received a final denial during FY96-FY99. Finally, we looked at FY00 projects to see if the Board's decision conflicted with the findings in the State Agency Report. For the projects that we identified as conflicted, we assessed whether there was sufficient documentation to support the Board's decision. We recommended that the Board assure that all applications are treated consistently and noted that this may require reviewing how similar projects were treated and may require comparing similar projects to choose the best one. (Recommendation Number 6, Page 56)

Documentation of Board Decisions

Because the Board does not issue a statement of findings that documents why they approve or deny a project it is sometimes difficult to see why a decision was made.

Because the Board does not issue a statement of findings that documents why they approve or deny a project it is sometimes difficult to see why a decision was made. We identified instances where the reason for the Board's action was not clear. Issuing a statement of findings could help applicants and potential applicants to understand the Board's decision making process. For approved projects, a statement of findings could be helpful for future applicants so they could see the Board's reasoning in approving projects that do not meet all of the applicable criteria. For denied projects, a statement of findings could provide guidance to the applicant on what they need to do to gain approval from the Board. (Pages 60-64)

We recommended that the Board consider issuing a statement of findings for why a project is approved or denied. This should be done for all projects approved as well as projects receiving an intent-to-deny, an initial denial, and a final denial. For denials, this statement should not just reiterate the criteria not met in the State Agency Report since most projects are approved without meeting all criteria. (Recommendation Number 7, Page 64)

AUDIT RECOMMENDATIONS

The Audit contains seven recommendations which are all detailed in this digest. The Health Facilities Planning Board and the Department of Public Health generally agreed with the recommendations. The Planning Board's comments included general comments about a variety of issues in the report as well as responses to each of the audit's recommendations. Planning Board and Public Health's responses to recommendations have been incorporated into the report and the full comments are included in Appendix H.

WILLIAM G. HOLLAND
Auditor General

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PROGRAM AUDIT OF THE HEALTH FACILITIES PLANNING BOARD

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Chapter One

INTRODUCTION AND BACKGROUND

REPORT CONCLUSIONS

Established by the Health Facilities Planning Act (20 ILCS 3960) in 1974, the Health Facilities Planning Board was created to help control rising health care costs by issuing permits or certificates of need. These permits allow health facilities to modify or construct facilities and to acquire major medical equipment in order to improve their services to health care consumers.

In June 2000, Public Act 91-0782 made several changes to the Health Facilities Planning Act and other acts that affected the Health Facilities Planning Board. Among the changes were requiring the Auditor General to conduct this audit of the Board; limiting the projects which would be reviewed by increasing the capital expenditures dollar threshold and excluding non-clinical service areas from review; and including a clause to repeal the Health Facilities Planning Act on July 1, 2003.

Determining whether a certificate of need (CON) program is effective is a difficult task. The Planning Board has done a number of studies and reports that consider elements of effectiveness but has not done an overall evaluation of the program's effectiveness. The Planning Board should make every effort to analyze its effectiveness and make and seek changes to improve the effect of the Illinois health planning process.

Health care research literature includes many evaluations of health planning and certificate of need programs. Although a few studies showed that health planning and CON programs may have some cost saving potential, studies did not consider or showed little evidence that programs have positive effects on access or quality of care.

The only tangible cost savings the Health Facilities Planning Board has identified in its annual reports is the difference between dollars proposed and dollars approved. Because some of these projects are not denied by the Board but are withdrawn by the applicant and some applicants reapply and are later approved, the cost savings reported in annual reports may be overstated. However, it should be noted that the requirement for the Board to do an annual report has been eliminated.

Staff at the Department of Public Health review certificate of need applications and prepare State Agency Reports that generally provide an objective evaluation of proposed projects by applying administrative rules. However, we identified a few instances when criteria were not applied consistently. We also found that some project review criteria in the administrative rules relate closely to one another so that one negative criteria may domino or carry over into other criteria causing them to be negative as well. Because State Agency Reports are one of the

primary sources that the Board uses in making its decision, all criteria should be applied consistently and be adjusted to minimize this domino effect.

The majority of FY00 projects that we analyzed complied with the timeliness standards in the Planning Board's administrative rules. However, Illinois' review period was the 8th lengthiest compared to the 33 other states for which data were available. In addition, the rules include elements that can lengthen the process.

The Planning Board did not consistently follow the administrative rules related to deferrals. Our testing revealed several examples of projects being deferred beyond what was allowable in the rules. The Board has also voted to defer projects even though nothing in the rules specifically allows them to do so. If the Board does not offer these deferrals to all projects, it could be viewed as giving one project an unfair advantage over other projects.

We identified some instances where we questioned the consistency of the Board's actions. Because the Board approves the vast majority of projects it considers, there are relatively few denied projects that we could identify and compare to other similar approved projects to consider consistency. However, we analyzed projects in several ways and identified six instances for which we questioned the consistency. One of the instances involved three similar projects that we believed were treated inconsistently but were all eventually approved. These raise particular concern for two reasons. First, the approval process was long and difficult for the involved applicants and second, all the projects were approved and capital construction was not limited.

We also identified a few cases where the Planning Board's decision was not consistent with the State Agency Report analysis. The Planning Board should work to assure consistency and should consider doing a statement of findings that summarizes the reasons for their decision to approve or deny a project.

BACKGROUND

On June 9, 2000, Public Act 91-0782 became law. The Act required the Auditor General's Office to conduct an audit of the Health Facilities Planning Board (Planning Board). The Act asked us to determine:

1. Whether the Planning Board can demonstrate that the certificate of need process is successful in controlling health care costs, allowing public access to necessary health services, and guaranteeing the availability of quality health care to the general public;
2. Whether the Planning Board is following its adopted rules and procedures;
3. Whether the Planning Board is consistent in awarding and denying certificates of need; and
4. Whether the Planning Board's annual reports reflect a cost savings to the State.

CERTIFICATE OF NEED

The concept of certificate of need (CON) was a state innovation. Begun in New York in 1964, legislation was passed aimed at reducing excess hospital bed capacity by requiring hospitals to obtain state approval prior to constructing new facilities or adding beds to existing facilities. This New York initiative became the model for capital expenditure regulation used in other states and eventually for the federal government. Illinois established its CON program with Public Act 78-1156, approved August of 1974.

In 1974, the federal government also mandated CON programs and by 1980 all states except Louisiana had adopted some form of CON regulation. Louisiana did eventually add a CON program for long term care services. Support for health planning at the federal level had waned by the early 1980's and in 1986 the federal government repealed national health planning, including certificate of need.

Other States' Certificate of Need Programs

The National Directory of Health Planning, Policy, and Regulatory Agencies was released early in 2000 by the American Health Planning Association (AHPA). The report summarizes CON and other health planning efforts throughout the United States with data from Fiscal Year 1998. The Planning Board expressed concern in its response to the audit report that a simple comparison of the data presented in the AHPA report may not adequately address the variation among the programs included in the AHPA inventory. The Board's complete response is included in Appendix H of this report.

Thirty-six states and the District of Columbia currently employ CON programs (see Exhibit 1-1). Fourteen states ended their CON programs, the most recent of which were Indiana in 1998, Pennsylvania in 1996, and North Dakota in 1995. Indiana and Wisconsin have both gone back and forth on whether to have or eliminate their CON programs. Currently, Wisconsin only reviews intermediate care facilities for the mentally retarded, long term care services, and subacute care.

Review Thresholds and Services Reviewed

Before changes made by Public Act 91-0782 in June 2000, Illinois' capital and equipment review thresholds were similar compared to the other states' programs: approximately \$2.67 million and \$1.32 million for capital and equipment respectively. However, with changes effective in June 2000, Illinois' capital expenditure minimum became \$6 million for major medical equipment and for all other capital expenditures, meaning that fewer projects will need to get the Board's approval. With this increase, Illinois has one of the highest thresholds. Only Massachusetts (\$9.17 million) and Illinois (\$6 million) exceed the \$5 million level. The capital expenditure thresholds for other states range from \$0.5 million to \$9.17 million and equipment review thresholds range from \$0.4 million to \$5.0 million.

More than half of the CON programs, including Illinois, review the establishment of certain new services even if the project is below the dollar threshold. Some states review all projects in certain categories, such as any additions of hospital or nursing home beds.

Exhibit 1-1 SUMMARY OF STATES' CERTIFICATE OF NEED PROGRAMS As of Fiscal Year 1998			
States <u>with</u> a CON Program			
Alabama	Iowa	Nebraska	South Carolina
Alaska	Kentucky	Nevada	Tennessee
Arkansas	Louisiana	New Hampshire	Vermont
Connecticut	Maine	New Jersey	Virginia
Delaware ¹	Maryland	New York	Washington
District of Columbia	Massachusetts	North Carolina	West Virginia
Florida	Michigan	Ohio	Wisconsin
Georgia	Mississippi	Oklahoma	
Hawaii	Missouri	Oregon	
Illinois	Montana	Rhode Island	
¹ CON extended to June 30, 2002			
States <u>without</u> a CON Program			
Arizona	Indiana	North Dakota	Utah
California	Kansas	Pennsylvania	Wyoming
Colorado	Minnesota	South Dakota	
Idaho	New Mexico	Texas	
Source: AHPA National Directory of Health Planning, Policy and Regulatory Agencies.			

Of the 37 CON programs in use, all review long term care projects. Five of the programs review primarily long term care type projects. Other health services that are reviewed by more than 70% of the CON programs include acute care, ambulatory surgical centers, open heart surgery, psychiatric services, rehabilitation, and substance abuse programs. Exhibit 1-2 shows a comparison of Illinois to other states for the number of applications and the dollars of projects approved. No clear information was available on the number or dollar amount of projects denied.

Exhibit 1-2 ILLINOIS COMPARED TO OTHER STATES Fiscal Year 1998 data		
	<u>Number of Applications</u>	<u>Dollars Approved</u>
Illinois	115	\$630 ¹
Illinois' Rank	29 th of 34 ²	28 th of 31 ²
For all Reporting States:		
Median Totals	42	\$126 ¹
Highest Total	511	\$2,014 ¹
State with Highest	New York	New York
Notes: ¹ Dollars in millions		
² Rank low to high based on states providing data.		
Source: OAG analysis of AHPA data.		

Budget and Staff Size

Illinois' CON budget of \$1.6 million is second only to Florida's (\$3.5 million). Rounding out the largest budgets are New Jersey at \$1.25 million and North Carolina and Alabama at \$0.75 million. The remainder of the budgets range from \$61,000 to \$659,000. Nine states, including some large states, did not provide budget numbers. Illinois' staff size of 13 tied as the fourth largest staff with North Carolina. New York had the largest staff with 60.

Exhibit 1-3 ILLINOIS' FEES COMPARED TO OTHER STATES Fiscal Year 1998 data			
Project Size.....		
	<u>\$0.5 Million</u>	<u>\$5.0 Million</u>	<u>\$50.0 Million</u>
Illinois' Fee	\$1,000	\$10,000	\$100,000
Illinois' Rank	9 th of 34 ¹	17 th of 34 ¹	31 st of 34 ¹
For all Reporting States:			
Median Fee	\$1,675	\$10,000	\$20,500
Highest Fee	\$12,500	\$25,000	\$201,000
State with Highest Fee	Florida	Oregon, D.C., Mississippi	New York
Note: ¹ Ranked from low to high.			
Source: OAG analysis of AHPA data and Internet information.			

Application Fees

Exhibit 1-3 shows our analysis of Illinois' fees compared to other states. It can be noted that as the project size increased, Illinois' fee relative to the other states increased. Many states, including Illinois, set a maximum fee. Illinois has the highest maximum fee (\$100,000), the next highest being Tennessee (\$45,000). We could not find information pertaining to maximum fees for 8 of the 34 states (including New York) included in our fee analysis.

HEALTH FACILITIES PLANNING BOARD

Established by the Health Facilities Planning Act (20 ILCS 3960) in 1974, the Health Facilities Planning Board was created to control rising health care costs by issuing permits or certificates of need. These permits allow health facilities to modify or construct facilities and to acquire major medical equipment in order to improve their services to health care consumers. Over the years changes have been made to the Act and the process. The following section describes the recent changes made by Public Act 91-0782.

Changes Made by Public Act 91-0782

In June 2000, Public Act 91-0782 made several changes to the Health Facilities Planning Act and other acts that affected the Health Facilities Planning Board. In addition to the requirement that the Auditor General conduct an audit of the Board, the following changes were made:

Raising the dollar threshold -- Capital expenditures under \$6 million will not need to go through CON review. Before the change, the major medical equipment threshold was \$1.32 million and the other expenditures threshold was \$2.67 million. However, the Act excluded health and fitness centers from the new higher threshold.

Excluding non-clinical service areas from review -- A non-clinical service area is an area for the benefit of the patients, visitors, staff and employees of a health care facility that is not directly related to the diagnosis, treatment, or rehabilitation of persons receiving services from the health care facility. Examples of non-clinical service areas include: gift shops, computer systems, dining areas, parking facilities, modernization of structural components (such as roof replacement), and mechanical systems (such as heating and air conditioning).

Including a sunset provision in the Act – A clause was added to the Health Facilities Planning Act to repeal it on July 1, 2003.

Including ethics laws requirements -- All Planning Board meetings are now subject to the Open Meetings Act and the Planning Board is now subject to the State Gift Ban Act.

Prohibiting ex parte communications -- Ex parte communication means a communication between a person who is not a Planning Board member or employee and a Planning Board member or employee that reflects on the substance of a pending Planning Board proceeding and that takes place outside the record of the proceeding.

Making other changes – In addition, the following other changes were made to the Health Facilities Planning Act:

- Adding a definition of an out-of-state facility and requirements for obtaining a CON permit for these facilities.
- Adding a requirement that each health care facility submit to the Planning Board an annual report of all capital expenditures in excess of \$200,000 made by the health care facility during the most recent year.
- Adding a requirement that capital expenditures for facilities licensed under the Assisted Living and Shared Housing Act should be excluded from any obligations under the Health Facilities Planning Act.

The Planning Board

The Planning Board is composed of 15 voting members appointed by the Governor with Senate confirmation. The Board's members include eight consumer representatives and seven industry members, one each representing the following:

- Commercial Health Insurance,
- Hospitals,
- Hospital Management,
- Professional Nursing,
- Physicians in Active Practice,

- Skilled Nursing or Intermediate Care Facility Management, and
- Ambulatory Surgical Treatment Centers.

The Planning Board provides for its own organization and procedures, including the selection of a Chairman and other officers as deemed necessary. The Director of the Department of Public Health, with concurrence of the Planning Board, names the Executive Secretary of the Planning Board. The Executive Secretary's position was vacant for most of the time we were doing this audit. The Department of Public Health also provides administrative and staff support for the Planning Board. These employees are referred to as State agency staff in this report.

Each Board member holds office for a three year term with each member holding office until a successor is appointed and qualified. The Secretary of Human Services, the Director of Public Aid and Director of Public Health, or their designated representatives, serve as ex-officio non-voting members of the Planning Board. Board members are paid expenses and a \$150 per diem while serving on business of the Board. A list of the current Board members is included in Appendix C of this Report. The Planning Board meets at least once each quarter or as often as the Chairman of the Planning Board deems necessary or upon request of a majority of the members. To be approved a project must receive at least eight affirmative votes, regardless of how many members of the Board are present.

The Review Process

The following section along with the flowchart in Exhibit 1-5 helps to explain how the review process works. The process begins when a health facility applies for a CON permit by submitting an application and paying the initial application fee of \$700 to the Department of Public Health. The application is reviewed by Public Health and the application fee is deposited into the Health Facilities Planning Fund. The total application fee is assessed based on the cost of the project and ranges between \$700 and \$100,000.

Ten working days are allowed for State agency staff at Public Health to perform a completeness review on the health facility's application. If the application is incomplete, the applicant receives notice from Public Health and is given 90 days to provide additional information to complete the application. If the applicant does not provide the requested information within this timeframe the application becomes void. If the additional information is provided to complete the application, the applicant receives notice and a hearing date is scheduled with the Planning Board.

Once an application is deemed complete and before the project is considered by the Board there is an opportunity for a public hearing. Notice for a possible hearing is published in a general circulation newspaper in the area or community to be affected. Any interested party can request a public hearing. If a hearing is requested, it is held in the area where the proposed project is to occur. Interested people can present their views or arguments in writing or orally, and a record of the testimony is sent to the Board to be considered before making a decision.

The application is classified as either substantive, non-substantive, or emergency. Exhibit 1-4 shows the types of projects which are considered non-substantive. Projects are considered emergency if there is an imminent threat to the structural integrity of the building or to the safe operation and functioning of the mechanical, electrical, or comparable systems of the building (77 Ill. Adm. Code 1110.40 a).

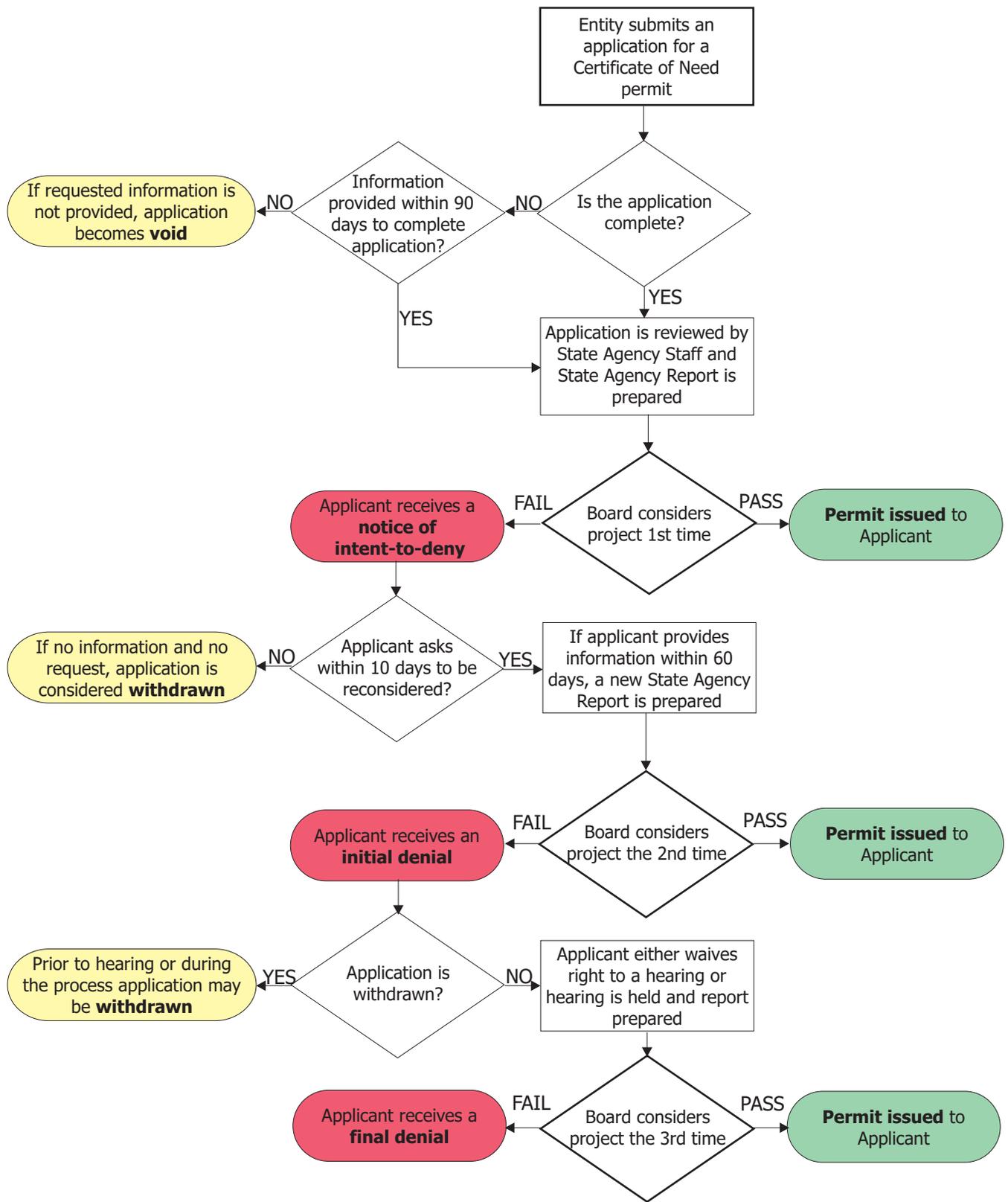
The CON application review is done by State agency staff. A reviewer reads the application and does analysis to determine whether the facility meets or does not meet the various criteria set forth in the State’s administrative rules. Staff prepare an analysis referred to as the State Agency Report which addresses the individual criteria. The report does not make a recommendation whether the project should be approved. The report is sent to the applicant and to the Planning Board. An example of a State Agency Report which considers criteria for a proposed project is included as Appendix E of this report.

After the application review process is completed, a copy of the State Agency Report, complete application, and public hearing information are sent to each of the Planning Board members. At the Planning Board meeting, usually with the applicant present, the Board considers the project and votes on whether it should be approved. A motion is made to approve a project with eight affirmative votes needed to issue a permit. If the project is approved, the CON permit is issued to the applicant. Failure of the project to meet one or more review criteria does not prohibit members of the Board from voting for approval. During the Board consideration process there are provisions to allow consideration of the application to be deferred.

If the project fails to receive eight votes, the applicant receives a notice of intent-to-deny. After the notice, the applicant has 10 working days to request to appear before the Planning Board or submit additional information. If the applicant waives the right to appeal the intent-to-deny or takes no action, the application is considered withdrawn. However, if the applicant elects to appear before the Planning Board, the Board will reconsider the application. If the applicant wants to submit additional information for the Board to consider, they have 60 days to provide the information. Upon receiving the information, Public Health has 60 days to review the information and prepare a supplemental report.

Exhibit 1-4 NON-SUBSTANTIVE PROJECTS
Chronic renal dialysis
Discontinuation of beds or category of service
Changes of ownership
Long-term care for the developmentally disabled
Acute care beds certified for extended care (swing beds)
Replacement of diagnostic or therapeutic equipment
Fitness centers
Medical Office Buildings
Residential Units and Apartments
Community-based residential rehabilitation center alternative health care model
Projects providing care to AIDS patients
Long-term care facilities licensed by DCFS
Source: Categories included in administrative rules (77 Ill. Adm. Code 1110.40 b) edited to reflect PA 91-0782 changes.

Exhibit 1-5
CERTIFICATE OF NEED PROCESS FLOWCHART



Source: OAG analysis of Planning Board Process.

Audit of the Health Facilities Planning Board

On a project’s second consideration, if the Planning Board approves the application, the CON permit is issued to the applicant. If the application is denied a second time, the applicant will be issued a denial of an application for permit. The applicant has 30 days to request an Administrative Hearing at which a Hearing Officer considers the case and issues a recommendation. After the hearing, the Planning Board will vote and issue its final decision. If the Planning Board issues a final denial, the only option left is for the applicant to appeal the decision in the Circuit Court.

Cost of the Review Process

The review process is funded by fees charged to applicants for project permits and the money is deposited into the Illinois Health Facilities Planning Fund. Exhibit 1-6 shows the fee receipts as well as appropriations and expenditures for the last five years. Application fees for projects are assessed at the following levels:

- 1) Less than \$350,000, then the application fee shall be \$700;
- 2) \$350,000 to \$50,000,000, then the application fee shall be .2 percent of the total estimated cost of the project. Fees based on .2 percent shall range from the minimum of \$700 on a \$350,000 project up to a maximum of \$100,000 on a \$50,000,000 project;
- 3) More than \$50,000,000, then the application fee shall be \$100,000.

Analytical work of the Planning Board is performed by Public Health employees who are paid out of the Illinois Health Facilities Planning Fund. The number of staff assigned for the last five years is shown in Exhibit 1-7. These staff do analyses of the projects which consider all of the criteria for projects which are laid out in the administrative rules.

Exhibit 1-6 ILLINOIS HEALTH FACILITIES PLANNING FUND RECEIPTS, APPROPRIATIONS, AND EXPENDITURES Fiscal Year 1996 to Fiscal Year 2000			
<u>FY</u>	<u>Receipts</u>	<u>Appropriations</u>	<u>Expenditures</u>
1996	\$859,720	\$1,800,000	\$1,331,665
1997	\$1,381,472	\$1,500,000	\$857,802
1998	\$1,930,397	\$1,500,000	\$1,175,658
1999	\$1,917,064	\$1,500,000	\$1,279,431
2000	\$1,778,433	\$1,598,315	\$1,242,655
Source: Health Facilities Planning Board Data.			

Exhibit 1-7 HEALTH FACILITIES PLANNING BOARD STAFFING Fiscal Years 1996 to 2000	
<u>FY</u>	<u>STAFF</u>
1996	10
1997	12
1998	12
1999	13
2000	16
Source: Health Facilities Planning Board Data.	

Projects Subject to Review

Public Act 91-0782 raised the capital expenditure minimum threshold which should reduce the number of projects that require a certificate of need permit. However, projects below the threshold may still require a permit. The Health Facilities Planning Act details the types of projects requiring review. A transaction is subject to review and requires a permit if the transaction:

- Requires a total capital expenditure in excess of the capital expenditure minimum; or
- Substantially changes the scope or changes the functional operation of the facility; or
- Results in the establishment of a health care facility; or
- Changes the bed capacity of a health care facility by increasing the total number of beds or by distributing beds among various categories of service or by relocating beds from one physical facility or site to another by more than ten beds or more than ten percent of total bed capacity over a two year period; or
- Involves a change of ownership; or
- Results in the discontinuation of an entire health care facility or category of service.

In some instances, a health facility may be granted an exemption which keeps them from going through the CON process. Again, the administrative code details the types of transactions which are eligible for an exemption and the procedural requirement for receiving an exemption.

Results of Reviews

The Planning Board approved 85 percent of the projects that it reviewed in Fiscal Year 2000. Exhibit 1-9 shows the number and dollar amount of projects approved by type of project during Fiscal Year 2000.

Exhibit 1-8 HEALTH FACILITIES PLANNING BOARD PROJECTS PROCESSED AND PROPORTION APPROVED Fiscal Years 1996 to 2000						
# of Applications.....		\$ of Applications (in millions).....		
	<u>Total</u>	<u># Approved</u>	<u>% Approved</u>	<u>Total</u>	<u>\$ Approved</u>	<u>% Approved</u>
FY96	110	74	67%	\$593	\$525	88%
FY97	103	88	85%	\$483	\$425	88%
FY98	146	129	88%	\$979	\$758	77%
FY99	133	115	86%	\$673	\$630	94%
FY00	130	111	85%	\$853	\$754	88%

Source: Health Facilities Planning Board Data.

Exhibit 1-8 shows the number of applications considered and the dollar value of applications considered for the past five fiscal years. The Exhibit also shows the number and dollar amount of the projects that have been approved. The proportion of projects approved is

Audit of the Health Facilities Planning Board

important because the Planning Board considers dollar value of projects not approved as health care cost savings. Total dollar amount not approved in Fiscal Year 2000 was over \$98 million.

Exhibit 1-9 HEALTH FACILITIES PLANNING BOARD PROJECTS APPROVED BY TYPE Fiscal Year 2000 (\$ in millions)				
Type	# Withdrawn or Denied	\$ Withdrawn or Denied	# Approved	\$ Approved
Hospital	5	\$37.5	54	\$559.0
Subacute Care	0	0	0	0
Long Term Care (LTC)	2	12.5	7	58.7
LTC Hospital Based	0	0	10	45.5
ICF/DD	0	0	1	0
Sheltered Care	3	12.2	5	19.7
Major Medical Equipment	1	2.2	7	16.0
Therapeutic Radiology	1	4.1	0	0
Post-Surgical Recovery	0	0	1	1.2
Ambulatory Surgery	4	12.1	7	24.1
Children's Respite	0	0	0	0
Renal Dialysis	<u>3</u>	<u>3.5</u>	<u>19</u>	<u>29.6</u>
Total	<u>19</u>	<u>\$84.0</u>	<u>111</u>	<u>\$753.7</u>
Note: Dollar totals do not add due to rounding.				
Source: Health Facilities Planning Board Data.				

SCOPE AND METHODOLOGY

This audit was conducted in accordance with generally accepted government auditing standards and the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310.

We obtained and reviewed information from the Department of Public Health relating to the Illinois Health Facilities Planning Board. Employees at Public Health do many of the administrative tasks for the Planning Board. We also attended Planning Board meetings and public hearings during the audit to observe the Board in action.

The information reviewed included Board vote tallies and transcripts along with the State Agency Reports prepared by Public Health employees. We also interviewed Public Health staff who work on Planning Board activities and interviewed the Chairman of the Planning Board.

In conducting the audit, we reviewed State statutes and administrative rules governing the operations of the Planning Board. We reviewed compliance with those laws and rules to the extent necessary to meet the audit's objectives. Any instances of non-compliance we identified are noted as recommendations in this report. To identify how Illinois' program compares to other states, we reviewed research and studies. We also reviewed information about other states' CON programs.

We reviewed the previous financial, compliance, and performance audits released by the Office of the Auditor General for Public Health to identify any issues related to the Planning Board. We reviewed management controls relating to the audit objectives which were identified in Public Act 91-0782 (see Appendix A). This audit identified some weaknesses in those controls which are included as recommendations in this report.

In addition, we tested all applications that were considered by the Planning Board for which there was a final disposition in Fiscal Year 2000. We collected dates from applications to allow us to test the timeliness of the approval process. We also did comparisons to projects in previous fiscal years and legal cases challenging Board decisions to look for consistency between and among decisions.

REPORT ORGANIZATION

The remainder of this report is organized into the following chapters:

CHAPTER TWO – PLANNING BOARD EFFECTIVENESS

CHAPTER THREE – COMPLIANCE WITH RULES AND PROCEDURES

CHAPTER FOUR – CERTIFICATE OF NEED CONSISTENCY

The Planning Board provided written responses to the audit report which included general comments about program effectiveness, program operations, Open Meetings Act/Gift Ban Act, annual reports and cost savings, and program coverage as well as responses to each of the audit's recommendations. Planning Board and Public Health's responses to the audit recommendations have been incorporated into the report and the full responses are included in Appendix H.

Chapter Two

PLANNING BOARD EFFECTIVENESS

CHAPTER CONCLUSIONS

Determining whether a certificate of need (CON) program is effective is a difficult task. The Planning Board has done a number of studies and reports that consider elements of effectiveness but has not done an overall evaluation of the program's effectiveness. The Planning Board should make every effort to analyze its effectiveness and make and seek changes to improve the effect of the Illinois health planning process.

Health care research literature includes many evaluations of health planning and certificate of need programs. Although a few studies show that health planning and CON programs may have some cost saving potential, studies did not consider or showed little evidence that programs have positive effects on access or quality of care.

The only tangible cost savings the Health Facilities Planning Board has identified in its annual reports is the difference between dollars proposed and dollars approved. Because some of these projects are not denied by the Board but are withdrawn by the applicant and some applicants reapply and are later approved, the cost savings reported in annual reports may be overstated. However, it should be noted that the requirement for the Board to do an annual report has been eliminated.

BOARD'S STATUTORY PURPOSE

The Health Facilities Planning Act was implemented to establish a procedure designed to reverse the trends of increasing costs of health care resulting from unnecessary construction or modification of health care facilities. The Act provides that the procedure shall represent an attempt by the State of Illinois to improve the financial ability of the public to obtain necessary health services, and to establish an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public.

One of the ways that the Board could measure whether it has been effective at achieving this purpose would be through reports and self studies of its effectiveness. The Planning Board has prepared reports for a variety of purposes including annual reports, reports to look at hospital capital expenditures, reports to analyze need and other criteria for different types of health care services to be reviewed, and other reports to address various health care concerns. However, the Board has not done an overall evaluation of the program's effectiveness. The following sections discuss the evaluations done in some of those reports and how they attempt to measure effectiveness.

PLANNING BOARD ANNUAL REPORTS

The only tangible cost savings the Health Facilities Planning Board has identified in its annual reports is the difference between dollars proposed and dollars approved. Because some of these projects are not denied by the Board but are withdrawn by the applicant and some applicants reapply and are later approved, the cost savings reported in annual reports may be overstated. However, it should be noted that the requirement for the Board to do an annual report has been eliminated. At one time the Board was required by federal requirements and State rules to prepare an annual report. However, federal requirements related to health planning changed in 1986 and the State administrative rules were changed in March 2000 to eliminate the requirement of an annual report. Although no longer obligatory, the Board did complete a combined report for Fiscal Years 1999 and 2000 in January 2001. In addition to our review of this biannual report, we also reviewed annual reports for the three previous fiscal years. The annual reports provide information on program actions and accomplishments, cost savings/program effects, and other activities such as legislation, litigation, rule changes, and studies performed by the Board.

In each of the annual reports that we reviewed the Board has attested to the cost savings that the program has accomplished over the years. The 1999 and 2000 annual report stated that:

The State Board has disallowed nearly \$1.2 billion in proposed capital expenditures since FY92. These savings have a tangible impact on the health care consumer and upon government and private reimbursement programs. Not only are construction costs saved, but additional expenditures that would be incurred to retire any borrowing to fund such projects are saved as well as operating costs that are not incurred.

Defining Cost Savings

The Board defines cost savings as disallowed capital expenditures. This definition gives rise to some concerns about the legitimacy of the cost savings which are discussed below. Although the Board's definition is also used in some other states, other studies we examined typically discuss cost savings in relation to total hospital or health care costs, rather than on a dollars proposed versus dollars approved basis.

Exhibit 2-1 DOLLARS PROPOSED VS. DOLLARS APPROVED Fiscal Years 1996 to 2000 (\$ in millions)			
<u>Fiscal Year</u>	<u>Amount Proposed</u>	<u>Amount Approved</u>	<u>Amount Not Approved</u>
1996	\$593.3	\$524.8	\$68.5
1997	\$482.9	\$425.3	\$57.6
1998	\$978.9	\$757.9	\$221.0
1999	\$673.1	\$629.9	\$43.2
2000	\$852.6	\$753.7	\$98.9
Totals	<u>\$3,580.8</u>	<u>\$ 3,091.7*</u>	<u>\$489.2*</u>

Note: * Does not add due to rounding.

Source: Planning Board Data Summarized by the OAG.

The Board's ability to create a cost savings is limited by the increased project

thresholds, which decreased the number of projects subject to CON review. One Board official

estimated that, under the law as amended by Public Act 91-0782, the Board would look at only 15% of all capital expenditures.

Creating a Cost Savings

As shown in Exhibit 2-1 the Board reported \$489 million in disallowed proposed expenditures between Fiscal Years 1996 and 2000. These disallowed expenditures are due to project withdrawals, denials, or cost reductions in approved projects.

Withdrawn Projects

The Board counts withdrawn projects as costs savings even if an application is submitted but then withdrawn before a State Agency Report is prepared. For example, in FY98 a project for \$130 million was submitted but then withdrawn because of the applicant’s pending change in ownership. The project was withdrawn prior to preparation of a State Agency Report and the applicant did not appear before the Board. The Board’s annual report included this amount in their total amount disallowed. It is misleading to suggest that this \$130 million was disallowed when the project never came before the Board and was never evaluated by State agency staff. It is also misleading to consider this a cost savings created by the Board when the reasons for withdrawal were because of a pending change in ownership and not because of a negative State Agency Report or a potential denial by the Board. In FY00 ten projects totaling over \$40 million were withdrawn before a State Agency Report was prepared.

Projects that Reapply

The Board’s measure of cost savings does not account for projects that were withdrawn or denied and then reapply later. Of the reported \$489 million savings over five years, \$452 million resulted from projects that were withdrawn or denied. Of this \$452 million, we identified \$126 million (28%) of projects that were withdrawn or were denied and were later approved under a different project number. When these projects were later approved, the total amount approved was actually \$132 million rather than the \$126 million when the projects were first submitted (see Exhibit 2-2).

Exhibit 2-2 WITHDRAWN OR DENIED PROJECTS LATER RECEIVING APPROVAL Fiscal Years 1996 to 2000 (\$ in millions)				
Fiscal Year	Total Amount <u>Withdrawn/Denied</u>	Number of projects later approved under a different <u>project #</u>	Amount previously not approved – <u>Withdrawn/Denied</u>	Amount later approved under a different project #
1996	\$65.0	5	\$9.5	\$10.3
1997	\$53.3	6	\$21.8	\$22.8
1998	\$210.0	8	\$59.7	\$65.9
1999	\$39.6	4	\$9.7	\$9.7
2000	<u>\$84.0</u>	<u>8</u>	<u>\$25.3</u>	<u>\$23.5</u>
Totals	<u>\$451.9</u>	<u>31</u>	<u>\$126.0</u>	<u>\$132.3*</u>

Note: * Does not add due to rounding.

Source: Planning Board Data Summarized by OAG.

Cost Reductions

While the majority of the reported cost savings over the past five fiscal years was a result of withdrawn and denied cases, some projects were approved for less than their original project cost. The difference between the original cost and the approved project cost is a cost reduction and considered by the Board to be a cost savings (see Exhibit 2-3). During Fiscal Year 2000, 13 projects had cost reductions of \$14.9 million. In one instance, a project's original cost included an expense for debt service reserve of \$2.1 million. The applicant revised the project costs, eliminating the debt service reserve. Although no longer included as a project cost, the debt service reserve was still required by the bond underwriter. The cost reduction in this case was not the result of the project being modified but was simply a change in how the costs were classified. However, the \$2.1 million difference was included in the Board's calculation of cost savings. It is not realistic to consider cost reductions of this nature as a cost savings when the cost reduction was not a result of the Board.

Exhibit 2-3 BREAKDOWN OF DOLLARS NOT APPROVED Fiscal Years 1996 to 2000 (\$s in millions)				
<u>Fiscal Year</u>	<u>Withdrawn</u>	<u>Denied</u>	<u>Cost Reductions</u>	<u>Total Amount Not Approved</u>
1996	\$38.2	\$26.8	\$3.5	\$68.5
1997	\$53.3	0	\$4.3	\$57.6
1998	\$210.0	0	\$11.0	\$221.0
1999	\$39.3	\$.3	\$3.6	\$43.2
2000	<u>\$78.8</u>	<u>\$5.2</u>	<u>\$14.9</u>	<u>\$98.9</u>
Totals	<u>\$419.6</u>	<u>\$32.4*</u>	<u>\$37.3</u>	<u>\$489.2*</u>

Note: * Does not add due to rounding.
Source: Planning Board Data Summarized by OAG.

Intangible Cost Savings

In addition to withdrawals, denials, and cost savings, the Planning Board contends in the annual reports that the sentinel effect (the mere existence of the CON program potentially discouraging imprudent applications) creates a cost savings that cannot be measured. The Board also asserts that, in addition to construction costs, expenditures such as operating costs are saved, and are therefore, intangible cost savings.

OTHER REPORTS PREPARED BY THE PLANNING BOARD

In addition to annual reports, the Planning Board has prepared reports, usually based on legislative requests, that have looked at hospital capital expenditures, criteria for different types of health care services to be reviewed, and other topics.

Hospital Capital Expenditure Reports

The Planning Board has conducted three studies of hospital capital expenditures over the years based on legislative resolutions. We reviewed the two most recent versions that in addition to capital expenditures, summarized facility resources and long-term debt. Studies reveal that historically only about one third of hospital capital expenditures are reviewed through the CON

program indicating that most capital projects are below the review thresholds. Higher thresholds incorporated into the Health Facilities Planning Act with Public Act 91-0782 should result in an even smaller portion of projects that will be reviewed. However, the reports do not assert that more projects need to be included in the review process to ensure or improve effectiveness.

Public Act 91-0782, which changed the Board's responsibility in relation to how many projects would require CON review, also created a new reporting requirement for health facilities. The Planning Board is now to require each health care facility to submit an annual report of all capital expenditures in excess of \$200,000 (annually adjusted for inflation) made by the health care facility during the most recent year. This annual report would allow the Planning Board to accumulate similar capital information in future reports.

Review Criteria Reports

State agency staff at Public Health and the Planning Board have done a number of reports that deal with review criteria that will be applied in the review process. These reports have included topics like adolescent psychiatric care, lithotripsy, hospital based and freestanding therapeutic radiology treatment, nuclear magnetic resonance imaging, and a planning area fit study.

These studies help the Board to assure that the criteria that are used to evaluate projects are appropriate. Although not specifically stated in the reports, maintaining current criteria could positively impact the Board's effectiveness.

Reports on Various Health Care Concerns

The Board has performed a few studies that deal specifically with quality of care and access to services. However, these reports do not suggest how the Board's work has been effective.

In its May 1999 "Study of Health Facilities Consolidation in Illinois," the Board studied the effects consolidation could have on cost, access, and quality. For cost, the report stated that, by consolidating facilities, greater efficiency could be obtained since unnecessary staff and services would be eliminated. However, it notes that cost savings may not be realized by consumers as a result of consolidation. Concerns were also expressed that a reduction in competition may cause increases in costs. For access, the report expressed that consolidation might result in rural areas experiencing difficulty in accessing health care services in the future. For quality, the report said that consolidation may positively affect quality by increasing volume and enabling health facilities to recruit and maintain health care professionals and expand services. However these are effects of a changing health care system and the report did not make observations or recommendations on how the Board could be effective.

In its April 1989 "Report on Access to Health Facilities in Rural Areas," the Planning Board and Task Force on Access to Health Facilities in Rural Areas presented suggestions to improve and maintain access to health care services in rural areas. The report noted one area where the Board can have an effect on access in its process. That occurs when an applicant can not establish need for the proposed project based on baseline targets but instead establishes an

allowable exception because they will be providing a service which is not currently accessible or because other providers restrict access based on the patient’s ability to pay.

The study concluded that the Board could undertake various initiatives to assist rural areas seeking to maintain or increase access to health services. It listed four possibilities that could impact Board rules: supplying an inventory of access patterns for hospitals, facilities, and services in rural areas; establishing quality of care indicators; requiring supplemental information to document local implications; and further discussing the viability vs. systems issue as it relates to rural areas of the state.

OTHER STUDIES AND EVALUATIONS

Although a few studies show that health planning and CON programs may have some cost saving potential, studies did not consider or showed little evidence that programs have positive effects on access or quality of care. There are many studies of the effectiveness of certificate of need programs. Many of the research studies that we have reviewed are shown in Exhibit 2-4. In addition, a bibliography of the studies is included in Appendix D.

Examples of Study Results

Two empirical or statistically based hospital studies showed minimal or no positive effect of CON programs. An empirical study based on federal and American Hospital Association data published in the Journal of Health Politics, Policy and Law found that mature CON programs were associated with a modest long-term reduction in acute care spending per capita, but not with a significant reduction in total per capita spending.

Exhibit 2-4 HEALTH PLANNING RESEARCH STUDIES	
	Bed Availability and Hospital Utilization: Estimates of the “Roemer Effect”
	Hospital Adoption of Medical Technology: An Empirical Test of Alternative Models
	How State Policy Affects Rural Hospital Consortia: The Rural Health Care Delivery System
	Certificate of Need Regulation and the Health Care Delivery System
	An Event History Analysis of the Adoption and Repeal of State Certificate-of-Need Regulation
	Evaluation of the Ohio Certificate of Need Program
	Certificate of Need and the Changing Market – An Analysis for the Illinois Health Care Cost Containment Council
	Beyond Health Care Reform: Reconsidering Certificate of Need Laws in a Managed Competition System
	Certificate-of-Need Deregulation and Indigent Hospital Care
	The Effect of State Certificate-of-Need Laws on Hospital Costs
	Does Removing Certificate-of-Need Regulations Lead to a Surge in Health Care Spending?
	State Regulation and Hospital Costs
	Controlling the Supply of Long-Term Care Providers in Thirteen States
	Assessment of the Effectiveness of Supply-Side Cost Containment Measures
Source:	OAG compiled from various sources. A bibliography of these studies is located in Appendix D.

The study also found that there is no evidence to support concerns of surges in acquisitions of new facilities or in costs following the removal of a CON program. The same study found that CON's impact on quality of care was inconclusive.

The study also noted that an area in which CON may be beneficial was in improving access to care; however, there was very little empirical evidence to support this claim. It also noted that the growth in managed care was one of the reasons for the lessened popularity of CON regulations. Managed care provides motivation for hospitals to control and contain costs. In all of the states in which CON has been repealed, there has been considerable growth in managed care since its elimination.

Another empirical study published in the Review of Economics and Statistics using nationwide data found no evidence that federal utilization controls or hospital investment restrictions have lowered hospital costs. It noted that past studies suggesting regulatory cost savings may have been biased as a result of omitted variables and the interaction of regulations. It concluded that these investment controls have failed to control or limit costs.

One study of hospital equipment purchases, published in HSR: Health Services Research, looked at the factors hospitals considered in deciding whether to obtain magnetic resonance imaging equipment (MRI). Motivators included anticipated financial returns, enhancement of present services, and technological change and innovation. The study concluded that the importance a hospital placed on being a technological leader, together with the hospital's clinical need for the equipment and potential increase in revenues, were the major determinants. However, certificate of need stringency and rate regulations did have a strong negative impact on the acquisition of the equipment.

A study of the Ohio CON program by Lewin/ICF and Alpha Center found that CON did not translate into reductions in total hospital expenditures although some acute care services were controlled. However CON did control the expansion of long-term care beds. The study recommended that the CON be retained for long-term care. This study was done by the same private group that had earlier evaluated the Illinois program. The Illinois study is discussed briefly in the next section.

A nursing home related study looked at efforts to control nursing home bed supply in thirteen states. These states used CON programs or bed building moratoriums to control Medicaid costs. The study discussed that without supply controls, occupancy rates might drop to inefficient levels. This could then result in unnecessarily high Medicaid reimbursement rates because fixed costs are allocated over fewer resident days. Thus, by preventing low occupancy rates by controlling supply, CON programs could potentially produce a cost savings. The study also found that limiting the supply of nursing home beds has had no adverse effects on access to nursing home care. While access may be sufficient, concerns have been raised about the effects of constraining supply on excess demand as well as adversely affecting the quality of care by restricting competition. Although controlling the supply of long-term care providers might serve both states and nursing homes well over the short-to-medium term, the study noted uncertainty of its effectiveness over the long run.

Review of the Illinois Certificate of Need Program

In 1987, a study by Lewin and Associates was performed of the Illinois certificate of need program. In the previous year the Illinois Health Care Cost Containment Council recommended the repeal of CON. The council then commissioned this study to expand upon the earlier work. Its goal was to analyze the health care market in Illinois and determine whether the CON program was needed and, if so, what the future focus and direction of the program should be. Most of the data in the study focused on hospital information.

The study did not recommend whether to repeal or retain the CON program. However, the study noted two approaches to consider if CON was retained. The report stated: “One approach would be to completely replace the Planning Board, not because its members have done a poor job (we can’t determine that), but to reinforce the governor’s commitment to the effective operation of the program. Perhaps even more effective would be restructuring the program so that decisions are made by the Department of Public Health. This would place responsibility upon the executive agencies for assuring adequate resources -- analytical, legal, and political -- are available and establish clear accountability lines for making the tough decisions.” These recommendations have not been implemented.

In addition, the study suggested that the CON program should be refocused to address a well-defined range of investments where it is felt that the market cannot yet operate effectively or where there are access or quality concerns that transcend market dynamics. Although there have been few changes in services covered by the CON program, the Board does make changes periodically to try to streamline components of the program.

IMPROVING EFFECTIVENESS

Although determining overall effectiveness of a CON program is difficult, there are some areas of Illinois’ program where changes could be considered to improve effectiveness. As part of our audit work we met with representatives of the health care industry to get their opinions on the Planning Board and its effectiveness. Some issues raised in those discussions and in our analyses may be important for the Board or the General Assembly to consider.

Level Playing Field

The CON process covers services that are provided in hospitals and certain other health facilities but may not cover some of the same services in another setting. For example, hospitals may have to go through the CON process when acquiring certain radiological equipment but if the same equipment is purchased for use in a physician practice it would not require approval. Although hospital representatives did not advocate expanding or contracting the Board’s authority to resolve this problem, they did express general concern with the Board attempting to expand its authority.

Nursing homes also have level playing field issues related to assisted living facilities. Because assisted living facilities are exempt from the CON process, facilities may be built that compete directly with nursing homes. However, assisted living facilities do not go through the CON process and nursing homes must.

Financial Viability

The Illinois Health Facilities Planning Act requires that “...a person establishing, constructing or modifying a health care facility...have the... financial resources to adequately provide a proper service for the community...” (20 ILCS 3960/2). As a result, the Planning Board currently must consider financial viability. However, in the projects approved by the Board that we analyzed in our testing (FY00) less than a third of projects, where the financial viability criteria applied, received a positive rating.

In our review of all projects which came before the Board in FY00 we found that financial viability criteria did not appear to affect the Board’s decision when awarding a CON. In fact, a higher percentage of projects were approved when the project financial viability was negative. Exhibit 2-5 shows that over 80 percent of projects with negative financial viability criteria were approved by the Board.

Exhibit 2-5 FINANCIAL VIABILITY CRITERIA FY00 projects			
Results of State Agency Review:	Project <u>Approved</u>	Project <u>Denied</u>	Percent <u>Approved</u>
Negative (80)	66	14	82.5%
Positive (41)	28	13	68.3%
Source: OAG analysis of FY00 projects.			

Concern was also expressed that the CON process assumes the board of trustees for large health care corporations need to be parented into making the right financial decision. There is a question whether a regulatory board can or should judge whether a corporation is financially capable of pursuing projects which average more than \$6 million.

Redundancy with Licensing

Requiring a CON for closing a facility or ending a service is required by the Health Facilities Planning Act but may be redundant with licensing. Even though a CON is required for closing a nursing home, the Nursing Home Care Act requires facilities to notify Public Health, residents, and patients’ representatives of the closing of a facility or portion of a facility (affecting more than 10% of residents). It also requires the facility to offer to assist the resident on alternatives and to notify Public Health if there are residents that will need relocation assistance (210 ILCS 45/3-423). During our audit work we observed the Board on several occasions question nursing home representatives to assure that patients were properly placed. Although the concern is legitimate, the licensing function may be at least partially redundant with the Board’s consideration.

Reviewing Discontinuation

Concerns were also raised about statutory requirements to review discontinuation projects. Three scenarios that we reviewed in our testing caused significant problems for applicants who wanted to close a facility. In the first scenario, a county operated nursing home wanted to close and contacted potential nursing home operators to build a replacement facility so that people being cared for in the nursing home could have a place to go and remain in the

county. After the county had worked for two years trying to find someone to take over the patients' care, the Board approved the closure of the county facility but denied the application of the nursing home operator that the county board had selected. Because the replacement was not approved, the county did not close the facility and was considering submitting a new application for the replacement.

A second scenario involved a Madison County nursing home and sheltered care facility that the county wanted to close. In this case the Board would not approve the discontinuation application because they thought that the county board should try harder to take care of the existing patients, to try again to pass an additional funding referendum, or to find someone to buy the existing facility. Eventually, the nursing home closure was approved and the sheltered care closure was withdrawn.

In a third scenario, a county hospital wanted to discontinue their general long term care category of service. The facility had letters indicating that nursing homes within 30 miles of the facility could accommodate the current patients. There were more vacant beds in the area than the number of beds to close. The application met all applicable criteria but the Board issued an intent to deny and the applicant withdrew the project. In public hearing testimony, community members voiced strong opposition to the discontinuation.

We also reviewed a number of discontinuation projects that were for facilities not operated by local governments. Although there were Board concerns about some of these projects, the projects were unanimously approved at the first Board vote. Considering the time and expense for applicants related to CON approval for discontinuation, there may be some question as to whether continuing to review discontinuation projects is effective.

Permits with Conditions

Requiring applicants to meet conditions related to their projects' approval may help the Board to meet its objectives, but some conditions imposed may be excessive. Industry representatives that we spoke with expressed concern about permits that are approved with conditions. Questions were raised related to the authority to approve permits with conditions and whether the Board follows up on permits that are subject to conditions. According to State agency staff, if a project is approved with conditions staff would send out letters requesting information to document compliance with conditions. If there is a problem, staff reports back to the Board.

In relation to the concern about the Board's authority to impose conditions, the Health Facilities Planning Act seems to give broad authority to the Board to provide safeguards in permits to assure that projects are consistent with the public interest (20 ILCS 3960/6). The statute also requires that projects have a permit and that they comply with the terms of that permit. Violators are subject to penalties including licensing and State payment restrictions (20 ILCS 3960/13.1). The section of the Act that allows the Board to consider the public interest provides that:

Upon receipt of an application for a permit, the State Board shall approve and authorize the issuance of a permit if it finds:

- (1) That the applicant is fit, willing, and able to provide a proper standard of health care service for the community with particular regard to the qualification, background and character of the applicant;
- (2) That economic feasibility is demonstrated in terms of effect on the existing and projected operating budget of the applicant and of the health care facility; in terms of the applicant's ability to establish and operate such facility in accordance with licensure regulations promulgated under pertinent state laws; and in terms of the projected impact on the total health care expenditures in the facility and community;
- (3) That safeguards are provided which assure that the establishment, construction or modification of the health care facility or acquisition of major medical equipment is **consistent with the public interest**; [emphasis added] and
- (4) That the proposed project is consistent with the orderly and economic development of such facilities and equipment and is in accord with standards, criteria, or plans of need adopted and approved pursuant to the provisions of Section 12 of this Act (20 ILCS 3960/6).

However, we identified a scenario in our review with conditions that do not seem closely related to the application being considered by the Board. The permits were requesting to consolidate health corporations, and a settlement agreement which eventually granted the consolidations placed conditions that required the applicant to provide concessions to physicians of one of the associated hospitals. The conditions included:

- Including physicians on the hospital board selected from a list of nominations by the medical staff;
- Having the medical staff bylaws constitute binding contracts;
- Banning exclusive physician contracts; and
- Working to allow physicians in the county to participate in a managed care entity partially controlled by the applicant.

In addition, the settlement agreement, which finalized approval of the permits, required the applicants to make contributions totaling \$600,000 to two free clinics over four years. One of the clinics is in Danville and one is in Joliet. The settlement agreement recites that public hearing testimony in Danville differed from that in other communities. Therefore, conditions established related primarily to entities in Danville even though the consolidation related to hospitals in eight different Illinois communities.

USE CONDITIONS PROPERLY	
RECOMMENDATION 1	<i>The Health Facilities Planning Board should assure that when conditions are required of applicants, that those conditions relate to the projects being considered and comply with the Health Facilities Planning Act.</i>
HEALTH FACILITIES PLANNING BOARD RESPONSE	<p>While the State Board agrees that conditions required of applicants relate to projects being considered and should comply with the Planning Act, it does not concur or agree that the cited case should serve as a basis for this recommendation. The State Board notes that the Report did not find the use of conditions beyond the scope of the State Board’s authority and that there was only a single case cited as an example of “conditions that do not seem closely related to the application being considered by the Board.”</p> <p>The “conditions” relating to this case were the result of a negotiated settlement agreement that was agreed to by the applicant, as well as, the State Board and other parties, was court approved and involved litigation between the State Board and an applicant. This particular case was unique in the history of the Illinois CON program, and because of the settlement agreement, the application was not processed or reviewed in accordance with established procedures. Furthermore, the applicant at all times had the legal right to pursue resolution of the dispute through the courts. The State Board believes the conditions were appropriate, and does not believe this unique case is indicative of the use of conditions nor similar to instances where applicants have agreed to comply with certain performance requirements as conditions for maintaining a valid permit. Nonetheless the State Board will review and analyze whether procedures or regulations should be adopted that provide a process for demonstrating that conditions comply with the Planning Act and that they relate to the type of project being reviewed. The detailed background of the cited case and the Agreed Consent Order and settlement agreement are appended to this response. (See Appendix H.)</p> <hr/> <p>AUDITOR COMMENT: <i>Although the conditions were part of a negotiated settlement agreement, it is not clear how some of the conditions were related to the consolidation of health care corporations.</i></p>

Assuring Sufficient Volumes

One area where certificate of need programs can be effective is in requiring applicants to document that they will be able to do a sufficient number of procedures to assure that they are done competently. Many medical studies have discussed the relationship between volume of procedures and successful patient outcomes. This is particularly important for applicants that are doing some specialized procedure. Exhibit 2-6 shows some examples of services covered by Illinois’ CON program where volume of procedures may be important. It is important not only to assure that the applicant will have sufficient volume but also to assure that neighboring facilities that do the same procedures will also be able to maintain sufficient volume to continue to operate effectively.

<p>Exhibit 2-6 EXAMPLES OF SERVICES WHERE AN ADEQUATE VOLUME MAY BE IMPORTANT</p>
<p>Open Heart Surgery Cardiac Catheterization Non-Hospital Based Ambulatory Surgery Intraoperative Magnetic Resonance Imaging High Linear Energy Transfer Kidney Transplantation</p>
<p>Source: OAG compiled from Board Rules.</p>

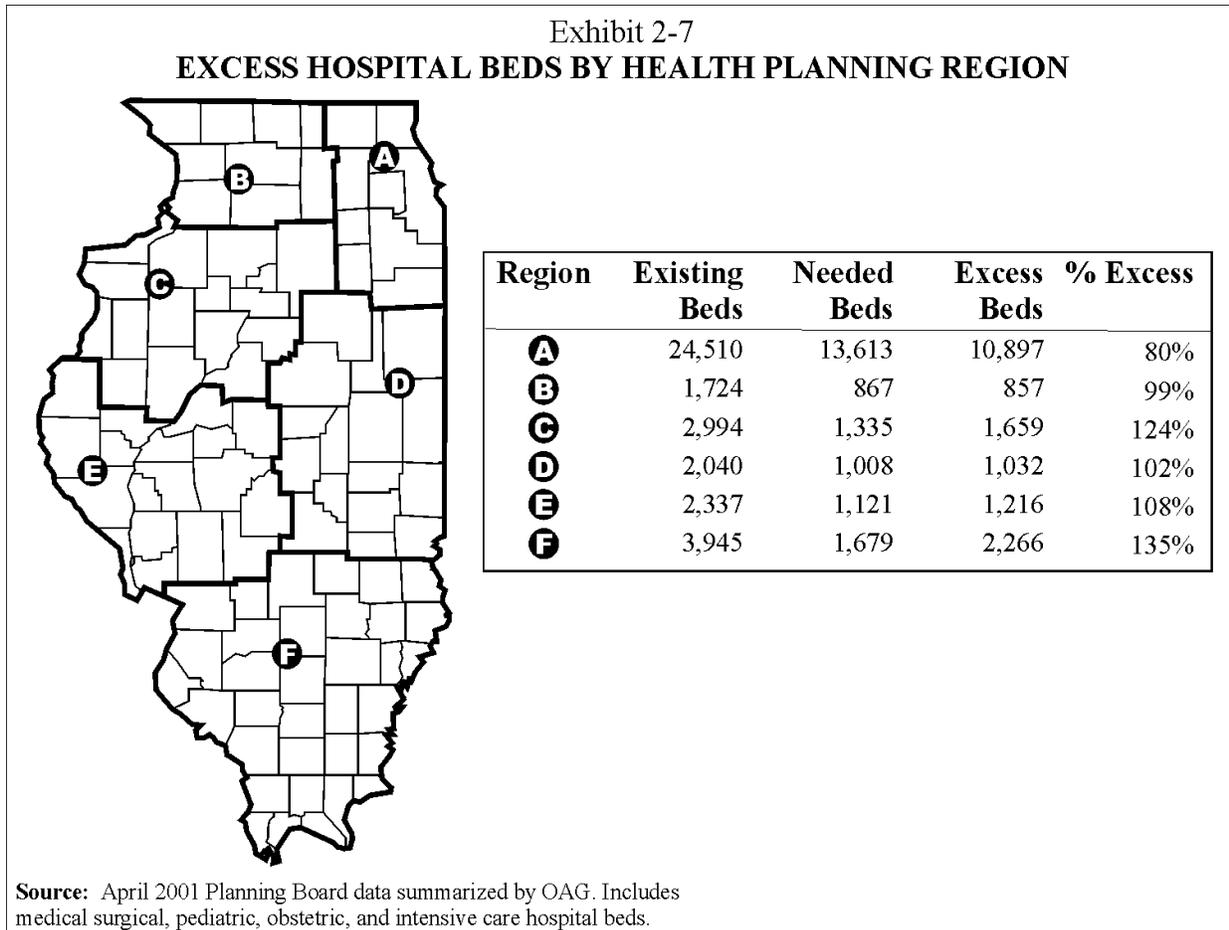
For all of the services listed in Exhibit 2-6, the Health Facilities Planning Board has administrative rules to help assure that sufficient volume can be obtained. In addition, in some cases the Board placed conditions on an applicant’s approval that required them to achieve a specific volume of procedures.

Although assuring sufficient volumes is an intended objective of the Board and an important tool for effectiveness, we identified contrary examples in our analysis of cases. We identified a project which was approved when volumes were not sufficient and without being subject to conditions. We also reviewed three projects which were approved when it appeared that they might have an adverse impact on an existing service and make it fall below the target volume. It appeared that in more than one example the State agency staff did not consider possible adverse impacts to services which were already operating below the target volume.

If a state does not have a CON program or phases out coverage of some services it may be necessary to develop other compensating standards or requirements which would allow for the public health to be protected. One example is in Ohio, where the certificate of need program has been phased out except for long term care projects. The Ohio Department of Health has worked to put in place regulatory procedures that require that a minimum number of procedures be done. One Ohio example is cardiac catheterization where volume standards have been developed using cardiology professional standards.

Excess Capacity

Even though the CON program has been in place for over 25 years, Illinois still shows significant excess capacity in a number of bed types and areas. For nursing homes overall there are 14,835 excess beds or 15 percent more than are needed. For hospitals overall there are 17,927 excess beds or 91 percent more than are needed. Exhibit 2-7 shows excess beds based on a comparison of existing beds to needed beds for hospitals by region. Although all regions have excess beds there are a few subcategories within regions that need intensive care or obstetric beds.



The data is from the Planning Board’s Inventory of Health Care Facilities and Services. It should be noted that the number of beds is only one of a variety of criteria that may be considered for a project.

IMPROVING EFFECTIVENESS	
RECOMMENDATION 2	<p><i>The Planning Board and State agency staff at Public Health should take every effort to analyze their effectiveness and to make changes to improve effectiveness. This may include working with consumers, health care payors, health research groups, health care providers, health care associations, and members of the General Assembly to be certain that the Illinois health planning process serves the needs of the people of Illinois.</i></p>
HEALTH FACILITIES PLANNING BOARD RESPONSE	<p>The State Board agrees with this recommendation to analyze and to make changes to improve the effectiveness of the CON program. The State Board will develop a plan or strategy by the end of the calendar year to address methods of evaluating CON’s impact upon controlling health care costs, allowing public access to necessary health services, and guaranteeing the availability of quality health care to the general public. The State Board has already established work groups representing both consumers and providers and will seek input from health care associations, other state agencies, members of the General Assembly and the Governor’s Office.</p>
DEPARTMENT OF PUBLIC HEALTH RESPONSE	<p>The Department is committed to assisting the State Board through the provision of administrative and staff resources in efforts to achieve this recommendation. As always, the Department staff is prepared to assist and work with the State Board, consumers, providers, and legislators in efforts to analyze the effectiveness of and to recommend changes to the certificate of need program. The Department notes, however, that the authority to make changes to any standards, criteria, and administrative procedures are under the jurisdiction of the State Board.</p>

Chapter Three

COMPLIANCE WITH RULES AND PROCEDURES

CHAPTER CONCLUSIONS

State Agency Reports generally provide an objective evaluation of proposed projects by applying administrative rules. However, we identified a few instances when criteria were not applied consistently. While these inconsistencies were by and large minor in nature, State Agency Reports are one of the primary sources that the Board uses in making its decision and all criteria should be applied consistently.

The majority of FY00 projects that we analyzed complied with the timeliness standards in the Planning Board's administrative rules. However, Illinois' review period was the 8th longest compared to the 33 other states for which data were available. In addition, the rules include elements that can lengthen the process.

The Board did not consistently follow the administrative rules related to deferrals. Our testing revealed several examples of projects being deferred beyond what was allowable in the rules. The Board has also voted to defer projects even though nothing in the rules specifically allows them to do so. If the Board does not offer these deferrals to all projects, it could be viewed as giving one project an unfair advantage over other projects.

ADMINISTRATIVE RULES

The Health Facilities Planning Board has developed a substantial number of administrative rules that help to guide an applicant through the process. Exhibit 3-1 on the following page contains a listing of the rules that establish criteria for judging projects. These rules contain provisions related to the general criteria for projects and criteria for specific types of projects. The rules have been developed over the many years that the Board has been in existence and have been revised many times. The Board attempts to keep the rules current to deal with the changing health care market and with medical advances.

We found that the Board and the State agency staff generally complied with established rules. The sections following the Exhibit describe some of the variances from administrative rules that we identified in evaluating projects. The administrative rules are the guidance for the process; there are no other written policies and procedures for the State Agency or the Board.

Audit of the Health Facilities Planning Board

Exhibit 3-1 SELECTED PLANNING BOARD RULES IN EFFECT APRIL 7, 2000	
TITLE 77 PART 1110 - PROCESSING, CLASSIFICATION POLICIES, & REVIEW CRITERIA	
SUBPART A	General Applicability and Project Classification
SUBPART B	Review Criteria-Discontinuation
SUBPART C	General, Master Design, and Changes of Ownership Review Criteria
SUBPART D	Review Criteria Relating to All Projects Involving Establishment of Additional Beds or Substantial Change In Bed Capacity
SUBPART E	Modernization Review Criteria
SUBPART F	Category of Service Review Criteria-Medical/Surgical, Obstetric, Pediatric and Intensive Care
SUBPART G	Category of Service Review Criteria-Comprehensive Physical Rehabilitation
SUBPART H	Category of Service Review Criteria-Acute Mental Illness
SUBPART I	Category of Service Reviews; Abuse/Addiction Treatment (repealed)
SUBPART J	Category of Service Review Criteria-Neonatal Intensive Care
SUBPART K	Category of Service Review Criteria-Burn Treatment
SUBPART L	Category of Service Review Criteria-Therapeutic Radiology
SUBPART M	Category of Service Review Criteria-Open Heart Surgery
SUBPART N	Category of Service Review Criteria-Cardiac Catheterization
SUBPART O	Category of Service Review Criteria-Chronic Renal Dialysis
SUBPART P	Category of Service Review Criteria-Non-Hospital Based Ambulatory Surgery
SUBPART Q	Category of Service Review Criteria-Computer Systems (repealed)
SUBPART R	Category of Service Review Criteria-General Long-Term Care
SUBPART S	Category of Service Review Criteria-Specialized Long-Term Care
SUBPART T	Category of Service Review Criteria-Intraoperative Magnetic Resonance Imaging
SUBPART U	Category of Service Review Criteria-High Linear Energy Transfer
SUBPART V	Category of Service Review Criteria-Positron Emission Tomographic Scanning
SUBPART W	Category of Service Review Criteria-Lithotripsy (repealed)
SUBPART X	Category of Service Review Criteria-Selected Organ Transplantation
SUBPART Y	Category of Service Review Criteria-Kidney Transplantation
SUBPART Z	Category of Service Review Criteria-Subacute Care Hospital Model
SUBPART AA	Category of Service Review Criteria-Postsurgical Recovery Care Center Alternative Health Care Model
SUBPART AB	Category of Service Review Criteria-Children's Respite Care Alternative Health Care Model
SUBPART AC	Category of Service Review Criteria - Community-Based Residential Rehabilitation Center Alternative Health Care Model
TITLE 77 PART 1120 - PLANNING FINANCIAL AND ECONOMIC FEASIBILITY REVIEW	
SUBPART A	Statutory Authority, Definitions, Applicability and Review Requirements
SUBPART B	Information Requirements
SUBPART C	Financial Feasibility Review Criteria
SUBPART D	Economic Feasibility Review Criteria
Source: Selected Health Facilities Planning Board Rules.	

TIMELINESS OF THE CON PROCESS

The majority of FY00 projects complied with the timeliness standards in the administrative rules. However, based on 1998 data Illinois’ review period was the 8th lengthiest compared to the 33 other states for which data were available. The Board’s rules contain a number of requirements to help ensure a timely process. However, there are also several parts of the rules that can lengthen the process. During FY00, it took an average of 141 days from application submission until the Board’s final action. The State Agency completeness review took an average of 16 days. From the time the application was deemed complete by the State Agency to the Board’s final action was 125 days.

Completeness Review

When an application is submitted, State agency staff must first determine whether the application is complete or incomplete; they have 10 working days to notify the applicant of their decision. Public Health met this timeliness requirement in 128 cases and nearly met the requirement in the two remaining FY00 cases that we reviewed. If the application is deemed incomplete, the applicant has 90 days to submit additional information to complete the application (77 Ill. Adm. Code 1130.620.c.5). Exhibit 3-2 shows that 99 of the 130 FY00 projects were deemed complete when first submitted. For these projects, the completeness review took an average of 9 days. However, applications that were incomplete took an average of nearly 39 days before all information was submitted and the application was deemed complete. Submitting an incomplete application added almost 30 days to the total processing time.

Exhibit 3-2 TIMELINESS OF COMPLETENESS REVIEW FY00 Projects				
	Applications		Days from Submission to being Deemed Complete:	
	#	%	Average	Range
Initially Deemed Complete	99	76%	9.07	0 to 15
Initially Deemed Incomplete	<u>31</u>	24%	<u>38.61</u>	10 to 120
Totals	<u>130</u>		<u>16.12</u>	
Source: OAG Analysis of Planning Board Data.				

Review Process

Once an application is deemed complete, the review process begins. The administrative code requires that all applications (other than emergency applications) be acted upon between 60 and 120 days from the time it is deemed complete (77 Ill. Adm. Code 1130.610.b). Depending on the type, the project is classified as substantive or non-substantive. Non-substantive projects must be acted upon at the first Planning Board meeting following 60 days. Substantive projects must be acted upon within 120 days.

Of the 130 FY00 projects, 52 were classified as non-substantive and 78 were classified as substantive. All of the non-substantive projects were acted upon or were scheduled for initial action at the first Board meeting following 60 days from when the application was deemed complete as required in the administrative rules. Only 1 of the 78 substantive projects was not acted upon or scheduled for initial action within 120 days as required in the rules. The single exception was acted upon 125 days from the time it was deemed complete.

Although the majority of projects complied with the timeliness standards, the review process can be lengthy for many projects. The rules require initial action within 60 to 120 days but not final action. Many factors can lengthen the review process.

- Consideration of the project may be deferred to the next scheduled Board meeting. Deferrals can occur for many reasons and are discussed in more detail later in this Chapter.
- Public Health may request additional information from the applicant and can extend the review period to the next scheduled Board meeting in order to examine the information.
- The applicant may submit information that modifies the project, in which case Public Health can extend the review period up to 60 days in order to examine the information.
- If a project is denied upon initial consideration, the applicant can submit additional information, which is also reviewed by Public Health, and appear before the Board a second time.
- If a project is denied a second time, the applicant can appeal the Board's decision in a lengthy administrative hearing process.

Exhibit 3-3 shows the timeliness of the review process considering two factors: the number of deferrals and the point in the process when final action took place. The overall average for the 130 projects was 125 days from the time the application was deemed complete to the final action. However, the 105 projects that were approved by the Board at the first consideration averaged 90 days. Looking at these projects more closely shows that 93 of the 105 were approved at first consideration with no deferrals. These 93 projects averaged 82 days for the review period. However, the 10 projects approved at first consideration that had one deferral averaged 130 days for the review period. The deferral added 48 days to the review process. There were three applications withdrawn following initial denial and five applications approved following initial denial. All of these projects went to administrative hearing following the initial denial. The average processing time for these two categories was 636 days and 613 days respectively.

Exhibit 3-3 PROCESS TIMELINESS Fiscal Year 2000						
		# of Deferrals				Total
		0	1	2	3	
Withdrawn prior to consideration	# of projects	11	1	1	1	14
	Average days	36.2	119.0	257.0	190.0	68.9
Approved at first consideration	# of projects	93	10	1	1	105
	Average days	82.2	130.0	251.0	241.0	89.9
Withdrawn following intent-to-deny	# of projects				1	1
	Average days				401.0	401.0
Approved following intent-to-deny	# of projects	1				1
	Average days	126.0				126.0
Withdrawn following initial denial	# of projects	2	1			3
	Average days	742.5	423.0			636.0
Approved following initial denial	# of projects	3	1	1		5
	Average days	585.3	657.0	654.0		613.4
Final Denial	# of projects			1		1
	Average days			385.0		385.0
Totals	# of projects	110	13	4	3	130
	Average days	103.8	192.2	386.8	277.3	125.3

Source: OAG Analysis of Planning Board Data.

Illinois' Process Compared to Other States

The National Directory of Health Planning, Policy, and Regulatory Agencies, which was released by the American Health Planning Association (AHPA), examined the length of the review period in states with a CON program including the District of Columbia (D.C.). The edition we reviewed gathered 1998 data on the average number of days to process applications from the time the application is deemed complete to the occurrence of the final decision. Of the 37 states with a CON program, 34 provided this information. Exhibit 3-4 shows that Illinois took an average of 120 days to process an application in 1998 which tied for 8th highest with Maine. Other states ranged from 300 days in New Jersey to 10 days in Louisiana. Exhibit 3-4 also shows the number of applications processed as reported to AHPA. Five states in the Exhibit did not provide this data.

Exhibit 3-4 AVERAGE DAYS IN REVIEW PERIOD 1998 Data from AHPA Survey							
<u>Rank</u>	<u>State</u>	<u># of Apps</u>	<u>Average Days to Process</u>	<u>Rank</u>	<u>State</u>	<u># of Apps</u>	<u>Average Days to Process</u>
1	New Jersey	152	300	*	Montana	**	90
2	Virginia	63	213	*	New Hampshire	7	90
3	Alabama	61	199	*	Oregon	3	90
4	Washington	11	180	21	Arkansas	32	85
5	New York	511	179	22	Missouri	49	83
6	North Carolina	**	135	23	Nevada	2	70
7	Maryland	**	122	24	South Carolina	53	62
8*	Illinois	115	120	25*	Florida	185	60
*	Maine	56	120	*	Iowa	27	60
10	Michigan	265	115	*	Ohio	23	60
11	Delaware	12	112	28	West Virginia	81	54
12	Kentucky	245	110	29	Connecticut	109	52
13*	Georgia	93	100	30	Mississippi	111	50
*	Rhode Island	9	100	31	Wisconsin	5	45
*	Vermont	14	100	32	Hawaii	**	41
16*	Alaska	9	90	33	Oklahoma	80	36
*	D.C.	30	90	34	Louisiana	**	10

Notes: * Tie ** Did not provide data

Source: AHPA National Directory of Health Planning, Policy and Regulatory Agencies – 11th Edition.

INCONSISTENCIES IN APPLYING CRITERIA

Although State Agency Reports generally provide an objective evaluation of a proposed project, we identified some instances when criteria were not applied consistently. While these inconsistencies were by and large minor in nature, State Agency Reports are one of the primary sources that the Board uses in making its decision and all criteria should be applied consistently. Some inconsistencies we identified, classified by criterion type, are discussed below.

Location Criteria

We found several examples where the location criteria were not applied consistently. In one example the general review criterion for location was evaluated and resulted in a negative finding in one State Agency Report and a not applicable conclusion in the State Agency Report for a similar project. The location criterion is only applicable to:

- the establishment of a new health care facility, or
- the establishment of a new category of service, or
- the acquisition of major medical equipment that is not located in a health care facility.

The first project involved the modernization of one floor of a hospital. Although the applicable criteria were not met, the State Agency Report gave a negative finding because the facility could not support the need to modernize 80 beds. However, the finding should have been not applicable.

The second project proposed to add two buildings and also to modernize existing space. The State Agency Report found that the facility could not support the modernization based on historical utilization but noted that the criterion was not applicable because the project did not establish a new health care facility, a new category of service, or acquire major medical equipment.

Both projects were similar in that both involved modernization and both had overall negative findings based on historical utilization not supporting the modernization. However, the location criterion was treated differently in each project.

Establishing Need for Modernization

Generally, to justify modernization involving beds, a facility has to meet certain occupancy levels. If the facility does not meet the occupancy level, the State Agency Report will have a negative finding that usually carries over into several review criteria. However, as Case Example One shows, two similar projects had different results. Both projects had a positive finding for modern facilities and both had negative findings for modernization of beds but varied on the criteria that carry over. This domino effect is discussed in more detail later in this Chapter.

Project #1 proposed to construct an addition to a hospital and remodel adjoining, existing space. Under Part 1110.420.a. Modernization of Beds, the State Agency Report stated that the number of beds proposed to modernize was high when evaluated against the target utilization. The utilization only supported modernizing 7 beds as opposed to the proposed 15 beds. The finding for this criterion was negative. Under Part 1110.420.b. Modern Facilities,

Case Example One		
Criteria	Project #1 Findings	Project #2 Findings
Modernize Beds Part 1110.420.a	-	-
Modern Facility Part 1110.420.b	+	+
Alternatives General Part 1110.230.c	-	+
Need General Part 1110.230.d	-	+
Size General Part 1110.230.e	-	+
Key: + = positive - = negative		

the State Agency Report gave a positive finding and stated that all departments involved were in need of modernization. However, under the general review criteria Parts 1110.230.c, d, and e, the State Agency Report was negative because the utilization did not justify the number of beds proposed for modernization.

Usually if the utilization did not support the modernization, it would carry over and cause negative findings under these additional criteria as it did in the above project. However, the next project did not follow this pattern.

Project #2 proposed to construct an addition to the facility and modernize several existing departments. Under Part 1110.420.a. Modernization of Beds, the State Agency Report stated the 60 beds to be modernized were operated at 43% occupancy as opposed to the target utilization of 80%. The report gave a negative finding for this criterion and suggested the applicant discontinue some of the beds to meet the target utilization. However, unlike the previous project, under the general review criteria Parts 1110.230.c, d, and e, the State Agency Report was positive. Specifically, for the need criterion, the report stated the applicant documented the need under the modernization section.

These projects both involved an addition and modernization and both projects had negative findings related to the target utilization justifying the modernization. However, the projects were treated differently in how this carried over to other criteria.

Dialysis Projects

Dialysis Projects are a type of project which is often reviewed by State Agency Reports. In our reviews we noted the following inconsistencies.

- **Economic Feasibility** review criteria were not applied consistently. One project proposed funding with cash and securities and a lease for the building. The State Agency Report listed the criteria for Reasonableness of Financing Arrangements, Terms of Debt Financing, and Costs of Debt Financing as not applicable to this project. However, other projects containing leases were evaluated and resulted in positive findings.
- Certain criteria only apply to **Establishment**.
 - In one case a positive finding was given for **Data System** when it should have been not applicable.
 - A second was given a positive finding for **Minimum Size of a Renal Dialysis Facility** when it should have been not applicable.
 - A third case had positive findings for four elements even though they did not apply.
- In most cases, criteria which were not applicable are noted but one case skipped criteria with no explanation.

Miscellaneous

For certain criteria, the State Agency Report would state that the criteria was not applicable but would then give a positive finding. Other times, for the same criteria, the State Agency Report stated that it was not applicable. For example, the criteria for start-up costs is not applicable when there are no start-up costs or when the project does not establish new services. However, several other State Agency Reports gave a positive finding.

Ambulatory Surgery Centers

We also identified two similar ambulatory surgical treatment centers (ASTC) whose State Agency Reports showed different conclusions. The first project was a hospital that proposed to build an ASTC with four operating rooms. The applicant indicated that the ASTC was needed due to the high utilization of the hospital's operating rooms and that all of the patients are projected to come from the hospital. The applicant looked at adding operating rooms to the hospital but found that the ASTC was the least costly alternative.

Criterion 1110.1540.g Establishment of New Facilities stated: "Any applicant proposing to establish an ambulatory surgical treatment center will be approved only if one of the following conditions exists:

- 1) There are no other ASTCs within the intended geographic service area of the proposed project under normal driving conditions; or
- 2) All of the other ASTCs and hospital equivalent outpatient surgery rooms within the intended geographic service area are utilized at or above the 80% occupancy target; or
- 3) The applicant can document that the facility is necessary to improve access to care. Documentation shall consist of evidence that the facility will be providing services which are not currently available in the geographic service area, or that existing underutilized services in the geographic service area have restrictive admission policies."

The State Agency Report noted that there were several ASTCs in the service area and there were several facilities operating below the 80% occupancy target. Therefore conditions one and two could not be met. For condition three, the applicant indicated that the proposed project would improve access to care by relieving pressure on the existing hospital surgery department and providing patients with a facility which was easier to access and utilize than the hospital. While this may be true, the applicant did not meet either of the technical documentation requirements of condition three. Despite the applicant not meeting the requirements of this criterion, the State Agency Report stated that access to care would be improved and gave a positive finding. This positive finding had a domino effect and the project also received positive findings for location, alternatives, and need for the project.

In a second example a hospital proposed to build an ASTC with six operating rooms. The applicant stated the anticipated surgery hours for the ASTC would be transferred from the

hospital. Like the first example, the hospital was experiencing high utilization in their operating rooms.

As in the first project, the three criteria for establishment of new facilities applied to this project. However, at the time that this project was submitted a fourth condition that could be met had been added to the rules:

- 4) The proposed project is a cooperative venture sponsored by two or more persons at least one of which operates an existing hospital.

Like the first project this applicant could not meet condition one or two because there were other ASTCs and other underutilized facilities in the area. The new condition four could not be met because the project was not a cooperative venture. For the third condition the State Agency Report stated “The applicant states that the facility will improve care in the area; however, some of the same services are available at underutilized facilities in the area without restrictive admissions policies. Therefore, the third criterion cannot be met.” The State Agency Report gave the project a negative finding for this criterion. Again, there was a domino effect and the negative also carried over into other criteria causing them to be negative. The project received negatives for location, alternatives, and need for the project. Comparing these two projects, the circumstances are virtually identical but had significantly different findings in their State Agency Reports.

APPLY CRITERIA CONSISTENTLY	
RECOMMENDATION 3	<i>State agency staff at the Department of Public Health should assure that evaluation criteria are applied consistently in the projects that they review and the State Agency Reports that they prepare.</i>
HEALTH FACILITIES PLANNING BOARD RESPONSE	This recommendation pertains to the Department of Public Health. The State Board concurs with the Report’s findings that “inconsistencies were by and large minor in nature” and notes that these discrepancies did not affect the State Board’s assessment of need or outcomes.
DEPARTMENT OF PUBLIC HEALTH RESPONSE	The Department concurs with the Auditor General’s finding that any inconsistencies in the State Agency Reports were “by and large minor in nature.” The audit team reviewed the Department’s State Agency Reports (SAR) on 130 certificate of need applications containing findings on approximately 2,000 review criteria and identified 21 instances where the findings appeared inconsistent among similar applications. The Department notes the following with respect to these 21 cases: <ul style="list-style-type: none"> • The vast majority (17 of the 21 findings) of these cases involved the staff analyzing and submitting findings on information provided by the applicant for review criteria that should have been reported as “not applicable.”

<p>PUBLIC HEALTH RESPONSE (continued)</p>	<ul style="list-style-type: none"> • In two of the remaining four cases that were cited, the Department believes that staff utilized appropriate judgement in evaluating unique circumstances pertaining to the applications being reviewed and in arriving at the findings contained in the SAR. The audit team has been advised of our rationale concerning these two instances. • Nearly all of the identified instances appeared to concern review criteria that were tangential to an application’s primary focus of justifying the need for a project (i.e. compliance or noncompliance with these criteria would not have a substantial impact upon an applicant’s overall justification of the need for a project). • The State Board noted in its comments concerning this recommendation that the 21 cited instances did not affect the outcome pertaining to the issuance of a certificate of need. <p>While the Department is functioning with a 99.9 per cent accuracy for the State Agency Reports, the Department nonetheless believes improvement can be made. The Department will strive to assure that there are no inconsistencies in the SAR findings. To accomplish this objective, additional checks and balances have been implemented including greater supervisory oversight in the initial development of draft reports and an additional administrative review to assure both continued quality in the substance of the reports as well as technical consistency in the application of the review criteria.</p> <hr/> <p><i>Auditor Comment: During the course of the audit, we provided the Department with <u>examples</u> of instances where State Agency findings were inconsistent. There were additional instances of inconsistencies among similar applications that we identified. While our testing showed that over 10 percent of the projects had at least one inconsistency, all inconsistencies were by and large minor in nature.</i></p>
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THE DOMINO EFFECT

Several review criteria in the administrative rules relate closely to one another. If one section receives a negative in the State Agency Report, the negative will carry over into other criteria causing them to be negative. This generally results when there is a failure to establish need for the project. The opposite effect also occurs when the applicant establishes need for the project. This domino effect occurs regularly and can make the State Agency Report look better or worse than it really is.

Under Part 1110 of the administrative code, most projects are subject to specific review criteria related to the type of project in addition to the general review criteria. For many types of projects, such as open heart surgery, non-hospital based ambulatory surgery, renal dialysis, and long term care, the applicant must document that the project is needed under the specific review criteria for that project. If the applicant fails to establish need, the negative results usually will domino into the general review criteria for location, alternatives to the proposed project, and need for the project.

In the adjacent example, a single issue, underutilized facilities in the planning area, resulted in negative findings for four different review criteria. Although this is an important concern that should be addressed, it may be redundant to address the same issue in multiple criteria.

Case Example Two

The domino effect in a proposed Ambulatory Surgical Treatment Center (ASTC). Under the specific review criteria the State Agency Report stated:

Criterion 1110.1540.e, Impact on Other Facilities

“...After examining the ASTC data and the hospital questionnaires, it appears that 23 of the facilities which provided data to IDPH are operating below the target utilization of 80% and have additional capacity to accommodate surgical cases. It appears that sufficient capacity already exists in the planning area and the impact of the proposed facility on the existing facilities would be negative as another ASTC is not needed.”

Because the applicant failed to establish need for the ASTC, the negative finding carried over to the following three general review criteria:

Criterion 1110.230.a, Location

“...It appears that the primary purpose and intent of the project is to serve the needs of the patients in the planning area. However, given the large number of underutilized facilities in the planning area, it appears that the proposed project would result in a maldistribution of services.”

Criterion 1110.230.c, Alternatives

“...Based upon the large number of underutilized facilities in the area, it appears that the alternative of utilizing existing planning area facilities is the most appropriate alternative available.”

Criterion 1110.230.d, Need for the Project

“...There are 23 ASTCs and hospital based outpatient programs in the planning area which are not operating at 80% occupancy. Therefore, it appears that the establishment of another ASTC in the planning area is not needed.”

DOMINO EFFECT	
RECOMMENDATION 4	<i>The Health Facilities Planning Board should examine their review criteria and make adjustments to the existing criteria or eliminate duplicative criteria to minimize the domino effect.</i>
HEALTH FACILITIES PLANNING BOARD RESPONSE	The State Board will examine its review criteria to address the “domino effect.” Although the Report expresses a concern that Department findings “look better or worse than it [State Agency Report] really is,” the State Board does not believe that the “domino effect” has adversely affected the outcome of projects with respect to demonstrating need and justifying approval. Nonetheless, the State Board recognizes the sensitivity of the provider community to “negative” findings and believes that this concern can be addressed by the end of the year.

PROJECT DEFERRALS

The Board did not consistently follow the administrative rules related to deferrals. Our testing revealed several examples of projects being deferred beyond what was allowable in the rules. The Board has also voted to defer projects even though nothing in the rules specifically allows them to do so. If the Board does not offer these deferrals to all projects, it could be viewed as giving one project an unfair advantage over other projects.

Administrative Rule Requirements

The administrative rules currently state that the applicant has the opportunity to defer initial consideration of their project, but not beyond a scheduled meeting date that is more than one calendar year from the date the application was deemed complete. Previous to this rule change, effective April 7, 2000, the applicant was allowed to defer (to the next scheduled Planning Board meeting) initial consideration only once.

An applicant is also afforded the opportunity to defer their project subsequent to a notice of intent-to-deny. Prior to the changes effective April 7, 2000, consideration could be deferred only by the applicant and only until the next scheduled Planning Board meeting. However, an applicant may now defer consideration more than once, but not beyond a Planning Board meeting date that is more than six months from the date the applicant received the intent-to-deny.

A project is often deferred because the applicant needs to provide additional information. However, the reasons the applicant may need to submit additional information vary. The applicant may wish to submit additional information prior to the Board meeting to address negatives in the State Agency Report. Also, during the Board meeting, the Board may ask the

applicant for additional information to address the Board’s concerns. An applicant may also defer if they do not feel their project will be approved at that meeting. Approval of a CON requires eight affirmative votes. If only eight or nine members are present or if members are absent who are likely to support an applicant’s project it may be more difficult to get approval.

The Planning Board, in addition to the applicant, has deferred projects. According to an agency official, there is nothing in the rules that says the Board can or can not defer a project and that the Board felt they had the statutory authority to do so. It was also noted that when the Board defers, it is with concurrence of the applicant. However, if the Board does not offer these deferrals to all projects, it could be viewed as giving one project an unfair advantage over other projects. For example, if the Board votes to defer a project because they would like additional information, the applicant may avoid having the project denied at that meeting. Other applicants that have used up their deferrals and are not offered an additional deferral by the

Case Example Three

A project was issued an intent to deny with 6 yes and 7 no votes. At the second hearing before the Board, 4 members that had previously voted for the project were absent. However, the applicant had no deferrals available. Six of the 9 members present voted for the project but because it did not receive the required 8 votes, it was denied.

Board must have their project voted on and it could be denied (see Case Example Three).

Results of Testing

Our testing revealed that 20 out of the 130 (15%) projects that received a final action during FY00 were deferred at some point in the CON review process. Thirteen of these 20 projects were deferred once, four deferred twice, and three deferred three times.

The Board did not consistently follow the administrative rules related to deferrals. Our testing revealed several examples of projects being deferred beyond what was allowable in the rules. All of these deferrals occurred when the rules stated that the applicant may defer one time the initial consideration of their project. Of the seven projects with multiple deferrals, five were allowed to defer initial consideration more than once. Exhibit 3-5 shows the nature of the deferrals for these projects. The other two projects with multiple deferrals followed the administrative rules. Each project was deferred once prior to initial consideration and again following an intent-to-deny.

Exhibit 3-5 PROJECTS WITH MULTIPLE DEFERRALS PRIOR TO INITIAL CONSIDERATION			
<u>Project #</u>	<u>Deferred by Applicant</u>	<u>Deferred by Board</u>	<u>Total Deferrals</u>
98-093	1	2	3
98-121	1	2	3
99-048	2	0	2
99-053	2	0	2
99-064	2	1	3

Source: OAG Analysis of Planning Board Data.

Our testing was based on the administrative rules previous to the changes effective April 7, 2000. As a result of the rule change, applicants can defer initial consideration of their project multiple times; however, noncompliance may still arise if the Board allows deferrals past the allotted time period.

USE DEFERRALS CONSISTENTLY	
RECOMMENDATION 5	<i>The Health Facilities Planning Board should assure that deferrals are used consistently. The Board should assure that the administrative rules are followed and that applicants are given consistent and fair consideration.</i>
HEALTH FACILITIES PLANNING BOARD RESPONSE	<p>The Report correctly noted that the State Board has recently revised its rules in order to address the issue of deferrals and has attempted to provide a procedure that is easily understood and utilized by applicants. The State Board has always attempted to be responsive by affording ample opportunities to correct deficiencies in applications. The State Board will monitor the use of deferrals as well as adherence to other procedural rules during the remainder of this year and will implement additional changes as quickly as possible if it appears that applicants are not given consistent and fair consideration.</p>

Chapter Four

CERTIFICATE OF NEED CONSISTENCY

CHAPTER CONCLUSIONS

We identified some instances where we questioned the consistency of the Board's actions. Because the Board approves the vast majority of projects it considers, there are relatively few denied projects that we could identify and compare to other similar approved projects to consider consistency. However, we analyzed projects in several ways and identified six instances for which we questioned the consistency.

One of the six instances involved three similar projects that we believed were treated inconsistently but were all eventually approved. These raise particular concern for two reasons. First, the approval process was long and difficult for the involved applicants and second, all the projects were approved and capital construction was not limited.

We also identified a few cases where the Board's decision was not consistent with the State Agency Report analysis. The Planning Board should work to assure consistency and should consider doing a statement of findings that summarizes the reasons for their decision to approve or deny a project.

ANALYSIS FOR CONSISTENCY

In our review of projects that come before the Board, we questioned whether the Board was always consistent in awarding and denying certificates of need. We identified similar projects that received different outcomes from the Board. We defined similar projects as those in the same category of service with most being in the same planning area or in an adjacent geographic location. After examining the State Agency Reports and the Board meeting transcripts, it was unclear why some projects were denied while other similar projects were approved. The Board does not issue a summary statement that details their findings or reasons for awarding or denying certificates of need.

We tested the Board's consistency in awarding and denying CON applications in four ways. We examined litigated cases to see if any of the plaintiffs contesting the issuance of a permit had a similar project denied by the Board. Second, we examined projects that came before the Board in FY00 and were not approved. For these projects, we examined similar projects that were approved to see if the denied projects were treated consistently. Third, we performed this same type of analysis looking at projects that received a final denial during FY96-FY99. Finally, we looked at FY00 projects to see if the Board's decision conflicted with the findings in the State Agency Report. For the projects that we identified as conflicted, we assessed whether there was sufficient documentation to support the Board's decision.

Consistency Criteria

The statutes and rules contain significant guidance on how to evaluate projects. This detailed guidance is designed in part to assure consistent treatment by the Board. According to the Health Facilities Planning Act (Act), the Board shall approve a project if it finds that:

- (1) the applicant is fit, willing, and able to provide a proper standard of health care service for the community;
- (2) economic feasibility is demonstrated;
- (3) safeguards are provided which assure that the establishment, construction or modification of the health care facility is consistent with the public interest; and
- (4) the proposed project is consistent with the orderly and economic development of such facilities and is in accord with standards, criteria, or plans of need.

The Board has established detailed review criteria and procedures in the Illinois Administrative Code to carryout the requirements of the Act. However, the rules specifically note that failure of a project to meet one or more review criteria does not prohibit the issuance of a permit (77 Ill. Adm. Code 1130.660). When issuing a permit, the Board considers:

- the application;
- any supplemental information or modification submitted by the applicant;
- the State Agency Report;
- the public hearing testimony;
- the applicant’s testimony at the Planning Board meeting; and
- other information coming before it in making its determination whether to approve the project.

Important Excerpt from 77 Ill. Adm. Code 1130.660:
The failure of a project to meet one or more review criteria, as set forth in 77 Ill. Adm. Code 1110 and 1120 shall not prohibit the issuance of a permit.

Example Summary of Findings
I. The State Agency finds that the proposed project appears to be in conformance with the provisions of Part 1110.
II. The State Agency finds that the proposed project does <u>not</u> appear to be in conformance with the provisions of Part 1120.

State agency staff at Public Health prepare the State Agency Report based on the application and other supplemental material submitted by the applicant. The State Agency Report does not make a recommendation on whether the project should be approved or denied but rather evaluates for compliance with the review criteria applicable to the specific project. The review criteria are enumerated in 77 Ill. Adm. Code 1110 and 1120. Part 1110

contains the general review criteria and specific criteria depending on the type of project (such as open heart surgery or renal dialysis criteria). Part 1120 contains the financial and economic feasibility review criteria.

The State Agency Report discusses each individual review criterion that is applicable to that project and reports whether the project is in conformance with that criterion. The State Agency Report also summarizes its findings and reports whether the project is in conformance with each Part as a whole. The Example Summary of Findings shows a sample of the summary of findings for a State Agency Report. The Example shows that the project was in conformance with Part 1110 but not in conformance with the provisions of Part 1120. This summary of findings would be the same whether the project was in conformance with all but one of the relevant sections of Part 1120 or none of the relevant sections of Part 1120.

ANALYSIS OF LITIGATION

In evaluating lawsuits against the Board, we attempted to compare them to similar projects to see if they were treated consistently. We found two instances where the plaintiff had a project denied that was similar to the project they were contesting. In one of these scenarios, which involved open heart surgery programs, we questioned whether the projects were treated consistently by the Board.

The majority of lawsuits brought against the Board are not from applicants being denied permits but instead are from competitors contesting the issuance of permits. The Board prepares and submits to the General Assembly a quarterly litigation report that summarizes litigation involving the Board. The reports list litigation brought against the Board and also the direct litigation costs that are reimbursed from the Health Facilities Planning Fund. Our review covered six quarterly litigation reports, the latest report covering the time period of July – September 2000.

The September 2000 litigation report stated that since July 1, 1992, of the 57 cases filed against the Board, virtually every judicial decision has affirmed the Board's action to grant or deny a permit. We examined the litigation reports from April 1999 to September 2000. These reports list 25 more current cases that we examined. Of those 25 cases, 23 involved competitors contesting permits. The court upheld the Board's decision to issue a permit in 22 of these cases with one case pending. One case that resulted in a decision against the Board involved an association contesting the Board's promulgation of emergency rules to regulate ambulatory surgical treatment centers. In the final case, a court entered settlement agreement resulted in approval of a consolidation which had been denied by the Board.

In some of the litigation cases we examined, the plaintiffs (competitors) alleged that the Board's issuance of a permit went against the manifest weight of the evidence. The courts have ruled that the Board was correct in examining supplemental information that addressed negative findings in the State Agency Report. In addition, even assuming the Board was not persuaded by such supplemental information, the Board's approval would not be against the manifest weight of the evidence because of the Administrative Code section 1130.660 that allows the Board to approve a project even if the project fails to meet certain criteria.

However, a recent court decision issued in March 2001 ruled that the Board could not issue a permit to construct an Ambulatory Surgical Treatment Center (ASTC) that failed to meet certain criteria despite the provisions of section 1130.660. The provision in question, section 1110.1540(f), applies only to ASTC projects and states that the Board will grant a permit “only if” one of certain conditions is met. The court ruled that the “only if” language took precedent over the conflicting language in section 1130.660 and that the Board must make a factual finding of whether the applicant was in compliance with the “only if” section.

Case Analysis from Litigation

We examined the cases from the litigation reports to see if any of the plaintiffs contesting the issuance of a permit had a similar project denied by the Board. We found two instances where this occurred. We compared the plaintiff’s denied project to the project they were contesting to see if they were treated consistently by the Board. For the first case, which involved an ambulatory surgical treatment center, it appears that the projects were treated consistently by the Board.

However, we question whether the applicants in the second case were treated consistently by the Board. Two applicants proposed to establish adult open heart surgery programs at different hospitals in the same community. The State Agency Reports for each project were virtually identical. Both projects met 13 criteria while failing to meet 5 criteria. The criteria met and not met for each project were exactly the same. Both applicants were partnering with other facilities that performed open heart surgery. The State Agency Reports recommended that the two hospitals work together to establish a single location where open heart surgery would be performed. These projects came before the Board in January 1999. One applicant’s project was approved by a vote of 11-2 while the other project was denied by a vote of 0-13.

After examining the transcripts from the Board meeting, it was unclear why one application was approved over the other. For the approved project, 5 of 13 members present asked questions of the applicant. For the denied project, only 2 of 13 members present asked questions of the applicant. The State Agency Report evaluated each project consistently but we questioned whether the Board was consistent.

ANALYSIS OF FISCAL YEAR 2000 PROJECTS

Of the FY00 projects we examined that were denied by the Board, we questioned whether three were treated consistently when compared to similar approved projects. Virtually all of the projects that come before the Board are approved. Of the 130 projects with a final action in FY00, 111 were approved, 18 were withdrawn, and only 1 was denied. As can be seen in Exhibit 4-1, 14 of the 18 withdrawn projects were withdrawn before the Board considered the projects. So actually 111 of the 116 projects (96 percent) that were voted on and received a final action in FY00 were approved.

Although only one project received a final denial in FY00, in effect, five projects were denied. When a project comes before the Board, it has three chances to be approved. If the

project fails to be approved at its first consideration, it is given an intent-to-deny. If the project fails to be approved at its second consideration it is given an initial denial and the applicant is given the opportunity for an administrative hearing. After the administrative hearing, the project comes before the Board for the final time and is either approved or given a final denial. Of the 130 projects finalized in FY00, only one was given a final denial. However, one project was withdrawn after receiving an intent-to-deny and three projects were withdrawn following initial denials. Even though the applicant withdrew these projects, they were in effect denied by the Board.

Exhibit 4-1 RESULTS OF PROJECTS Fiscal Year 2000	
<u>Project Results</u>	<u># of Projects</u>
Approved at first consideration	105
Approved following an intent-to-deny	1
Approved following an initial denial	<u>5</u>
Total approved	111
Withdrawn prior to Board consideration	14
Withdrawn following an intent-to-deny	1
Withdrawn following an initial denial	<u>3</u>
Total withdrawn	18
Final Denial	<u>1</u>
Total Projects	<u>130</u>
Source: OAG analysis of Planning Board Data.	

In addition to these five denied projects, we also examined five additional projects that came before the Board in FY00 but were not finalized in FY00. Two of these projects received initial denials from the Board and as of June 2001 were in administrative hearing, one project received an initial denial in FY00 and a final denial in FY01, and two projects received either an intent-to-deny or initial denial in FY00 and were withdrawn in FY01.

Case Analysis from FY00 Projects

We compared these ten denied projects to similar approved projects to see if they were treated consistently by the Board. Of the ten projects, six were found to have similar projects with

which to compare. Of these six, we questioned whether three cases were treated consistently when compared to similar approved projects. In assessing consistency, we examined the State Agency Reports as well as the meeting transcripts.

Two of the projects, one to establish an open heart surgery program and one to construct a long term care facility, were denied while similar projects in the same geographic area were approved. It was unclear from examining the State Agency Reports and the meeting transcripts why one project was approved over another. The third project, which was a dialysis project, was denied despite establishing need and meeting basically the same criteria as other similar approved projects. The open heart surgery project was discussed previously under the litigation analysis. The other two projects are discussed below.

Long Term Care Facility

An applicant proposed to construct an 85 bed general long term care facility with 60 skilled care beds and 25 sheltered care beds with an estimated project cost of \$3.95 million. In a separate application, the DeWitt County Nursing Home proposed to close their facility and transfer all of their residents to the new facility. The County Nursing Home consisted of 60

nursing care beds and 25 sheltered care beds. The application for the new facility was intended as a bed for bed replacement facility.

The first applicant's State Agency Report for the new facility contained negatives for six criteria. Most of the negatives dealt with one issue: need for beds in the planning area. If the application to discontinue the County Home was approved, there would be a need for only 42 beds and not the 60 proposed. The applicant addressed the negative findings at the Board meeting. They said that there were three other long term care facilities (not including the County Nursing Home) in the planning area. One, the local hospital, had some beds but they were short term beds and it was only a 9 bed facility. The other two facilities had occupancy rates at 90%. The applicant proposed 60 beds instead of the 42 beds calculated by the Inventory because they were replacing the 60 beds at the County Nursing Home. The applicant contended that a 42 bed facility would force 18 residents to move out of the County. The Board approved the discontinuation of the County Home but denied the application for the new facility with 7 yes votes and 4 no votes (8 votes are needed for approval). After the project was denied, the Chair stated, "The Board has voted an intent-to-deny. I think they would like to have some of the negatives answered that are in the State Staff Report."

At the second meeting in November 1998, the first applicant further addressed the negatives in the State Agency Report. They stated that one of the long term care facilities in the area submitted incorrect data on patient days which caused the Inventory to underestimate the bed need. With the corrected data the Inventory would have shown a need for 17 beds in addition to the 60 they were proposing. The State, however, would not revise the numbers because the corrected data was received after the deadline for submitting information. Although it appeared that the applicant addressed the Board's concerns from the first meeting, the Board requested several pieces of additional information that were not requested at the first meeting. This information dealt with the sewer system and a Tax Increment Financing District. The applicant deferred consideration.

A second applicant filed a CON application to add beds to their existing facility which was located in the same community as the first applicant's proposed new facility. The second applicant proposed to add 42 skilled nursing care beds, relocate 12 existing skilled nursing beds, create an Alzheimer's unit, and construct a separate building to house 38 sheltered care beds at an estimated cost of \$7.83 million. This applicant came before the Board in November 1998 and also requested a deferral after additional information was requested.

Both applicants appeared again at the January 1999 Board meeting. The second application to add beds to their existing facility was approved by a vote of 13-0. The first application, the intended bed for bed replacement facility, was denied a second time. Although it had received 7 yes votes at the first meeting, the vote at this meeting was 0 yes votes and 13 no votes.

We question whether these projects were treated consistently. At the January 1999 meeting, the Board criticized the County for the process they used in selecting a replacement vendor even though the Board's rules do not specify a process to be used. The Board has actually been critical of other County Nursing Homes for not doing enough in seeking replacement vendors. In this case, it appears that before closing the County Nursing Home, the

County spent a lot of time planning a replacement facility that would accommodate all 60 residents. The County Board voted unanimously to endorse that decision. The first applicant's new facility was intended as a bed for bed replacement facility and would ensure that all of the current residents were taken care of. Despite these efforts, the Board denied the application for the new facility and instead approved the second applicant's project that added only 42 beds and cost nearly twice as much. Following the Board's decision, the County decided to abandon their permit to close the County Nursing Home and elected to continue operating the facility. The permit awarded to add 42 beds to the existing facility expired without any construction taking place. As of April 2001 the Inventory showed that DeWitt County still needed 20 nursing home beds.

Renal Dialysis Facility

The applicant was proposing to establish a 16-station renal dialysis facility. There was a need for 66 stations in the planning area. The State Agency Report contained negative findings for two Part 1110 criteria, support services and facility size criteria, as well as four financial criteria. The two Part 1110 criteria not met appeared to be minor. One involved the applicant's failure to provide evidence that blood bank services would be available. The applicant provided a letter at the Board meeting asserting that the service would be available. The other negative criteria involved the size of the facility. The State Agency guideline is 470 Gross Square Feet (GSF) per station. The applicant was just above the guideline at 472.19 GSF per station. The project was denied by a vote of 4-9. The applicant later withdrew the project because of a change in ownership.

It appears that this project was not treated consistently compared to other similar projects. The applicant established need for the project and met all but two Part 1110 criteria. Two other dialysis projects were both approved under similar circumstances (i.e. negative financial criteria, need for stations in the planning area, similar facility size). Another project was approved with three negative criteria that this project satisfied, including the need criterion.

ANALYSIS OF DENIED CASES FROM PREVIOUS FISCAL YEARS

Of eight denied projects that we examined, we questioned whether two were treated consistently by the Board when compared to similar approved projects. In these two scenarios, the approved projects contained similar negative findings when compared to the denied projects. This analysis was limited to only projects receiving a final denial during Fiscal Years 1996 - 1999 and only the State Agency Reports were examined.

The first scenario involved sheltered care facilities. Both projects we examined failed to establish need for the project.

- In one project, the applicant proposed to construct a 56 bed sheltered care facility for Alzheimer Disease and Related Disorders. The State Agency Report stated that there were four facilities in the planning area that were underutilized and were offering sheltered care services. Although the applicant provided referrals that could fill the proposed facility, it did

not appear that these patients were currently inappropriately placed. The Board denied the project in August 1995.

- A similar project proposed to construct a 120 bed sheltered care facility which would include 24 units to serve Alzheimer's patients. The State Agency Report for this project again reported that four facilities in the planning area were underutilized. The Board approved the project in January 1997.

Both of these projects were in the same planning area. Both received similar negative findings in the State Agency Report related to underutilized facilities in the area. However, one project was denied while the other was approved.

The second scenario involved Ambulatory Surgical Treatment Centers (ASTCs). Both projects we examined failed to establish need for the project.

- In one project, the applicant proposed to establish an ASTC with four surgery suites. Another ASTC 2.5 blocks from the proposed facility would close and the new facility would assume all of their patients. The applicant did not establish need for the facility due to underutilized surgical space at other facilities in the area. The Board denied the project in June 1996.
- In the second project, the applicant proposed to establish an ASTC with three operating rooms. The location was approximately 10 miles from the proposed location of the previous project. According to the applicant, the patient target area was a 15 mile radius or a 30 minute travel time. The State Agency Report stated that at least two other facilities could be negatively impacted if this project was approved. These two facilities offered procedures at lower costs than the proposed facility and both had substantial surgical capacity. The Board approved the project in January 1997.

Both of these projects were in the same health service area approximately 10 miles apart. Both failed to establish need. However, one project was denied while the other was approved.

ANALYSIS OF A GROUP OF APPROVED PROJECTS

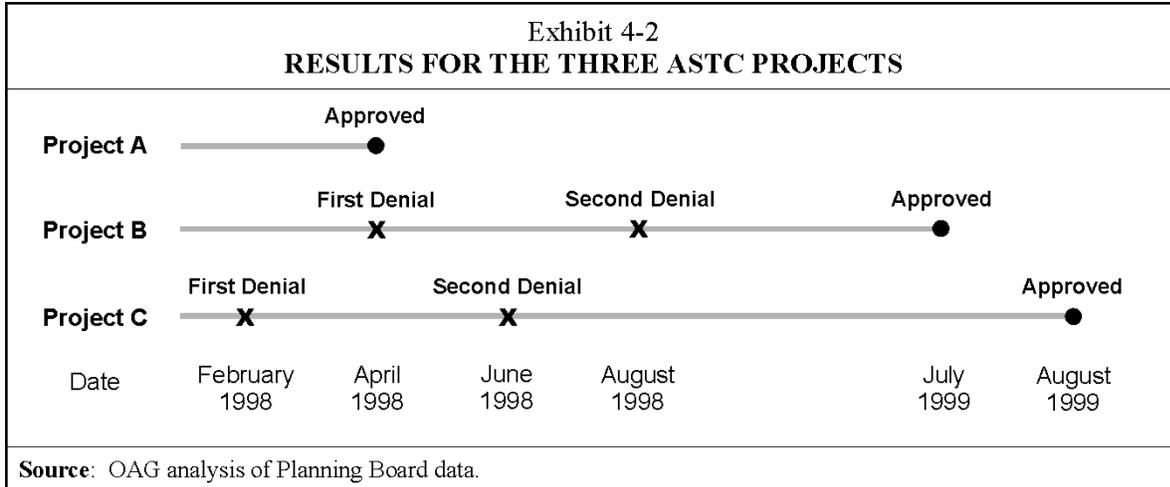
We noted groups of approved projects where we either questioned the Board's decision or were unsure why the Board ruled the way they did. All of these projects were eventually approved. These raise particular concern for two reasons. First, the approval process was long and difficult for the involved applicants. Second, all the projects were approved and capital construction was not limited. The scenario is discussed below.

Ambulatory Surgical Treatment Centers

Three applicants each proposed to establish an Ambulatory Surgical Treatment Center in the same community. At the time of the applications, there was one hospital in the community

but no ASTC. Exhibit 4-2 shows the progression through the CON process for the three projects. As can be seen in the Exhibit, eventually all three projects were approved.

The applicant for Project C proposed to establish an ASTC with two operating rooms with an estimated project cost of \$0.8 million. Project C was the third application submitted but was the first to appear before the Board. The State Agency Report contained negatives for nine criteria. Applicable criteria are shown in Exhibit 4-3. The project was denied by a vote of 0-9. Two of the Board members stated that the applicant should try to consolidate their project with the other two projects.



Projects A and B both came before the Board in April 1998. The applicant for Project A proposed to establish an ASTC with three operating rooms and an estimated project cost of \$3.7 million. The State Agency Report contained negatives for 12 criteria. The applicant testified that competition was needed in the area to improve the quality and types of services available. The applicant also said they had met with the other two applicants but were not sure if they could get together to consolidate the ASTCs. Project A was approved by a vote of 11-0.

The applicant for Project B proposed to establish an ASTC with two operating rooms and a cardiac catheterization lab with an estimated project cost of \$4.2 million. The State Agency Report contained negatives for eight criteria. At the meeting, the applicant stated that they had entered into a joint agreement with Project C. Both applicants would still have their own facilities and would need separate CONs but physicians could use either facility. The applicant also stated that they had tried to work with the applicant for Project A but had been unsuccessful. Project B was denied by a vote of 0-11. Project B came before the Board again in August 1998 and was denied a second time by a vote of 0-10. Subsequently the project went to administrative hearing.

At the July 1999 Board meeting, the Board came out of executive session and added Project B to the agenda. The project was approved by a vote of 12-0 with little discussion. The Board stated that the principal issue was the accuracy and legitimacy of the referral figures and that the applicant had submitted information during the administrative hearing process that corrected this problem. However, when the project was denied for the second time in August 1998, the Board did not ask any questions related to the referral numbers. In fact, the supplemental State Agency Report issued for that meeting stated that “The applicant has now

provided a sufficient number of referrals to indicate that they can appropriately utilize the proposed two operating rooms.”

Project C came before the Board again in June 1998 and was denied a second time by a vote of 0-10. The Board questioned the authenticity of their referral numbers and the impact they would have on the hospital. This project also went to administrative hearing.

In August 1999, Project C came before the Board a third time. Similar to Project B, it was stated that the problem with physician referrals had been clarified; with Project C however, referral volume was an issue the Board discussed with the applicant at the prior meeting when the second denial was issued. The Board approved the project by a vote of 9-0.

After examining the State Agency Reports and meeting transcripts, it was unclear why the Board initially approved Project A over the other projects. The State Agency Report for Project A contained more negatives than the other two projects and had the same problems with referral numbers as the other two projects. However, at initial consideration, Project A was unanimously approved while the other two projects were unanimously denied.

TREATING APPLICANTS CONSISTENTLY	
RECOMMENDATION 6	<i>The Board should assure that all applications are treated consistently. This may require reviewing how similar projects were treated and may require comparing similar projects to choose the best one.</i>
HEALTH FACILITIES PLANNING BOARD RESPONSE	The report points out that there appear to have been occasions where applications proposing similar services may have had different outcomes. The State Board notes that, while some applications are similar, none are identical. Each case is reviewed on its own merits, within its own unique context, with consistent attention to equitable administration of the Board’s authority. Even the most similar of cases may exhibit different applicant responses to the same review criteria and may have had different degrees of support from the community through the public comment and hearing process. The State Board agrees that applicants should be treated consistently, and appreciates the Report’s suggestion that a comparative review process be initiated in order to choose the best application to meet community needs. The State Board will initiate a review of its procedures to consider whether a comparative review process should be initiated in Illinois to assure overall consistency in application reviews.

Exhibit 4-3 RESULTS OF INITIAL STATE AGENCY REPORT FOR APPLICABLE CRITERIA FOR THE THREE ASTC PROJECTS			
Criteria	Project A approved 4-98	Project B approved 7-99	Project C approved 8-99
General Review Criteria:			
Location	+	+	+
Ancillary and Support Services	+	+	+
Staffing	+	+	+
Background of Applicant	+	+	+
Alternatives	-	-	-
Need for the Project	-	-	-
Size of the Project	-	-	-
ASTC Criteria:			
Licensure	+	+	+
Scope of Services Provided	-	-	-
Target Population	-	+	+
Projected Patient Volume	-	-	-
Treatment Room Need Assessment	-	-	-
Impact on Other Facilities	-	-	-
Establishment of New Facilities	+	+	+
Charge Commitment	+	+	-
Cardiac Catheterization Criteria (6 elements)	N/A	5 + 1 -	N/A
Financial/Economic Criteria			
Financial Viability	-	+	N/A
Availability of Funds	-	+	+
Start-up Costs	+	+	+
Reasonableness of Financing	+	N/A	+
Terms of Debt Financing	-	N/A	+
Costs of Debt Financing	+	N/A	+
Reasonableness of Project Costs	-	+	-
Operating Costs	+	+	+
Capital Costs	N/A	+	N/A
Key: + = positive - = negative N/A = not applicable			
Source: OAG analysis of Planning Board Data.			

ANALYSIS OF CONFLICTED PROJECTS

We questioned whether there was sufficient documentation to support the Board’s decision in 4 of 37 cases where there was a conflict between the State Agency Report and the Board’s vote. The State Agency Report is one of the main sources of information the Board uses in making their decision.

We examined projects that came before the Board during Fiscal Year 2000 and determined if there was a conflict between the Board’s decision and the State Agency Report. Generally, if the applicant did not establish need for the project in the State Agency Report and the Board still approved the project, we determined that there was a conflict. Conversely, a conflict also existed if the applicant established need for the project but the Board denied the project. Generally, the financial and economic (Part 1120) criteria were not considered in our assessment of a conflict. Once a conflict was determined, we examined the conflicted projects for documentation to support the Board’s decision. The Board’s reasoning was not always supported since they do not issue a statement of findings for why a project was approved or denied.

In most cases we determined that the Board’s decision was sufficiently documented. In our analysis, reasons that we accepted to support the Board’s approval despite negative findings in the State Agency Report included:

- The project did not meet some criteria but the differences were negligible;
- The applicant’s testimony at the Board meeting addressed negatives in the report;
- The applicant presented additional evidence during the process to address negatives in the report;
- The permit was issued subject to certain conditions; and
- The project contained unique circumstances that merited approval (e.g. the project would provide care for an underserved portion of the population).

However, in 4 of 37 cases where there was a conflict, documentation did not support the Board’s decision. Exhibit 4-4 briefly describes each of the four projects. One case involved the Board denying a project despite the project meeting the only applicable

<p>Exhibit 4-4 CONFLICTED PROJECTS WHERE THE BOARD’S DECISION WAS NOT SUPPORTED BY DOCUMENTATION</p>
<ul style="list-style-type: none">• Discontinuation of a 100 bed long term care facility. Board initially denied the project despite the project meeting the only applicable criterion.• Purchase of an existing Positron Emission Tomographic (PET) scanning service. Board initially denied despite need being established for the project.• Establishment of a 6-station renal dialysis facility. Board initially denied despite need being established for the project.• Establishment of a 16-station renal dialysis facility. Board denied despite need being established for the project.
<p>Source: OAG analysis of Planning Board Data.</p>

criterion. The remaining three cases involved the Board denying a project even though need was established. Three of the four projects are discussed below.

Discontinuation of a 100 Bed Long Term Care Facility

A county nursing home in Southwestern Illinois proposed to discontinue their 100 bed long term care facility. The State Agency Report found that the closure would not adversely impact the health care needs of the planning area. The bed Inventory showed that there were 409 excess beds in this category in the planning area. At the first Board meeting in August 1998, the Board asked the applicant to make an effort to keep the home open by bringing in a management company or trying to lease the home. The Board members also expressed concerns about the lack of public involvement and support for the closure, as well as concerns about relocated residents. The project received an intent-to-deny. This decision appeared reasonable based on the Board's concerns.

At the second meeting in October 1998, the applicant addressed the Board's concerns from the first meeting. They stated that developers they had spoken to expressed no interest in developing an intermediate care facility because of the overbuild situation in Madison County. The applicant also noted that there were only 29 residents in the 100 bed facility which was down from 58 residents four months previously. The Board still expressed concern that closing the facility would limit access and voted to deny the project a second time.

Based on the excess of beds in the planning area and the applicant addressing the Board's concerns, we concluded that documentation did not support the decision to deny the application a second time. It appeared that residents of the nursing home were being placed in other facilities with little trouble. Also, the Inventory of beds showed an excess of 409 beds in the planning area. Subsequently, the applicant requested an administrative hearing, and at the completion of the hearing, submitted a proposed settlement agreement to the Board. The Board approved the closing of the county nursing home in August 1999.

Purchase of an Existing Positron Emission Tomographic (PET) Scanning Service

The applicant proposed to purchase an existing PET scanning service. The applicant documented need for the project; however, they were unable to document that they were going to be able to provide the full range of services required by the State rules. The rules list several services that should be present including ultrasound, nuclear medicine, TCT scanning, radionuclide procedures, and conventional diagnostic x-ray. The applicant lacked only conventional diagnostic x-ray and stated that it was not available at the site of the PET scanning service, but it was available at two sites located 2.5 miles from the Center. At the Board meeting, a physician testified that conventional x-rays are not really used in relation to PET scanning. The applicant also testified that this was simply a change in ownership that was the result of a corporate restructure. The CON was needed because the transaction would result in the PET scanning service being owned on behalf of a health care facility. The applicant also stated that a delay in approving the project would not affect patient care but would incur additional interest expense. The project received an intent-to-deny in April 2000.

Documentation did not support the Board's decision to issue an intent-to-deny for this project. The PET scanning service currently existed and was operational without diagnostic x-ray. The transaction appeared to be simply a technical change in the ownership and patient service would not be affected. Subsequent to the intent-to-deny, the applicant submitted additional information indicating that additional space would be added to the Center for conventional x-ray and mammography. The project was approved in August 2000.

Establishment of a 6-Station Dialysis Facility

A hospital proposed to establish a 6-station renal dialysis facility. The applicant established need for the project and met all Part 1110 criteria but one, Affiliation Agreements. The State Agency Report stated that the applicant had an agreement with a hospital to provide inpatient care and other hospital services as needed; however, no agreement was provided so the State Agency Report reflected a negative finding. The applicant also did not meet all financial viability ratios, which is not uncommon among dialysis facility applicants.

At the June 2000 Board meeting, the applicant addressed the negative findings. The applicant stated that the hospital establishing the facility would also provide any needed inpatient care and hospital services. The applicant's representative noted that they were not aware in preparing the application that they needed a contract with themselves. They did bring a letter to the meeting from the CEO of the hospital affirming that the services would be available. The Board, however, stated that they would like to see the agreements with the hospital but could not accept new information. The project received an intent-to-deny.

We questioned the Board's decision to issue an intent-to-deny for this project. The applicant established need for the project and the negative criteria appeared to be minor. The applicant also addressed the negative criteria during the Board meeting. Subsequently, the applicant submitted the letter from the hospital and the project was approved at the July 2000 Board meeting.

DOCUMENTATION OF BOARD DECISIONS

Because the Board does not issue a statement of findings that documents why they approve or deny a project it is sometimes difficult to see why a decision was made. We identified instances where the reason for the Board's action was not clear.

The Administrative Code requires the Board to issue a statement of findings on its decision for projects that go through the administrative hearing process. The Code states "At the conclusion of such administrative hearing, or upon default of the applicant, the State Board shall make its final administrative decision, specifying its findings of fact and conclusions of law." (77 Ill. Adm. Code 1130.680.c) The Board, however, is not required to issue a statement of findings for projects that are approved or denied prior to the administrative hearing process. The following case examples show scenarios in which projects seemed consistent with Board policies and destined for approval and yet were at least initially denied.

Replacement of Computer System

An applicant proposed to replace its existing hospital information system. The State Agency Report stated that the existing system was outdated, was not year 2000 compliant, and needed to be replaced. The applicant met all Part 1110 criteria but received negatives for three Part 1120 (financial/economic) criteria. The three negatives involved debt service ratios, cost of debt financing, and capital costs. The Board has typically approved projects that meet the Part 1110 criteria which establishes need for the project despite negatives in the financial criteria.

At the June 1998 Board meeting, the applicant stated that their preferred financing strategy for capital projects is to incur low cost debt. This strategy resulted in the negatives in the State Agency Report but the financial position of the hospital remained strong as evidenced by a AAA bond rating from Standard and Poor's and 460 days of cash on hand. The Board expressed concern about the amount of cash on hand and questioned the applicant about the amount of the applicant's patient charges. The Board issued an intent-to-deny by a vote of 0-12. Subsequent to the intent-to-deny, the applicant addressed variances that cleared two of the three negatives but that did not alter the project. At the August 1998 Board meeting, the applicant stated that if the project did not get put in place, the accounting and clinical systems of the organization would become inoperative. The project was then approved 10-0.

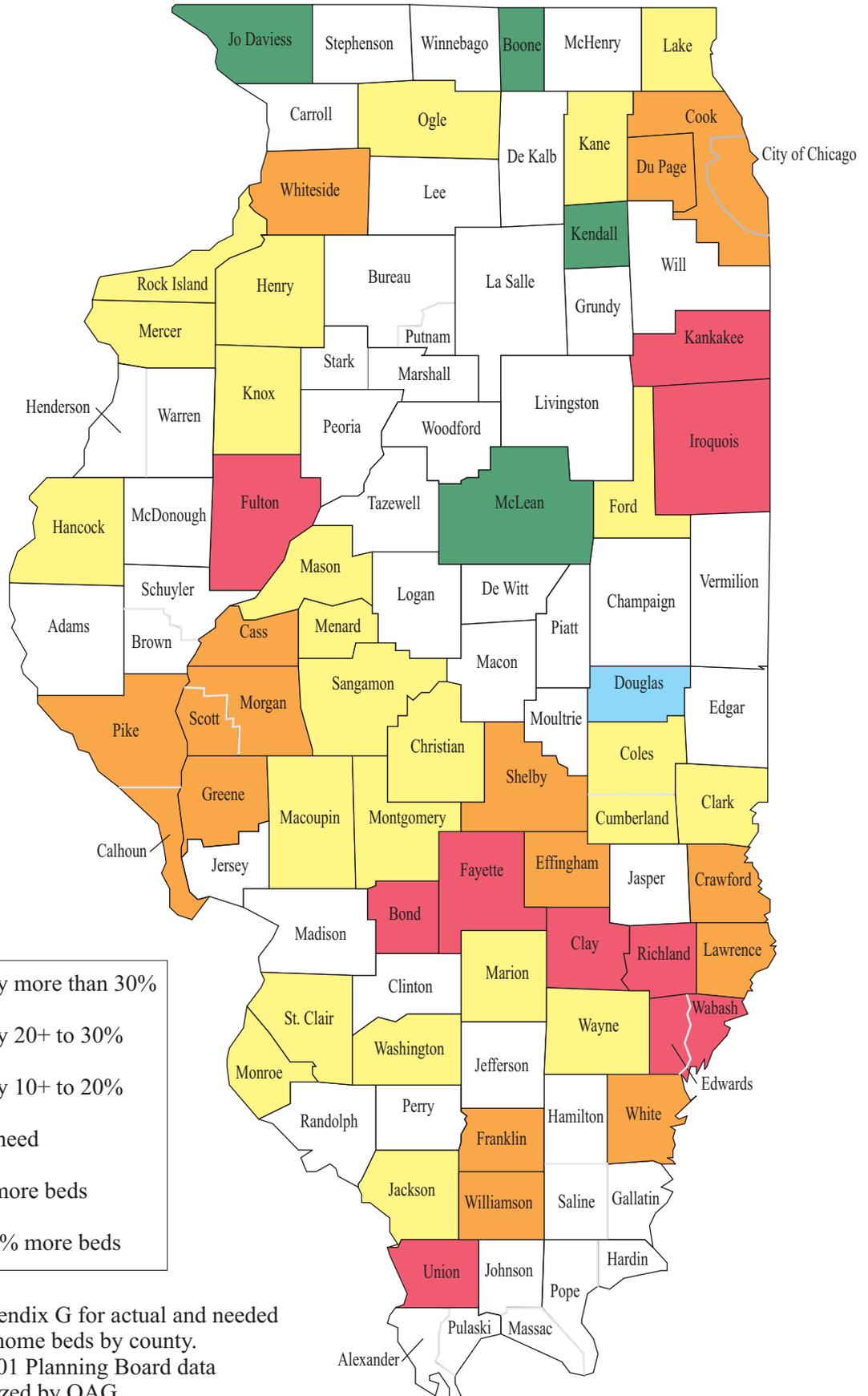
It appears that the Board was not reviewing the proposed project but was considering the applicant's financial strategy and patient charges, which may be beyond the intent of the Planning Act. The computer system was necessary for the hospital to become year 2000 compliant and to ensure patient services were not affected. The Board delayed the project by two months. It should be noted that with the passage of Public Act 91-0782, computer system projects are no longer subject to Board approval.

Health and Fitness Center

An applicant proposed to construct a health and fitness center adjacent to the facility's primary care center. In the State Agency Report the staff gave the application positive findings for all of the applicable criteria. At the August 1998 Board meeting, the Board expressed concern for a not-for-profit hospital competing against for-profit fitness centers and questioned the applicant about their mission statement and their anticipated members. The applicant stated that it was difficult to anticipate the Board's concerns and to try to comply with the Board's interpretation of the rules. The applicant elected to defer the project and verified the issues that the Board wanted addressed.

In documents submitted to the Board and also at the October 1998 Board meeting, the applicant addressed the concerns from the first meeting. The Board, however, continued to question the applicant on their proposed membership, the risk of the project, and the need for the project. In the meeting transcript, the applicant seemed unsure of what else they needed to do to comply with the Board's rules and concerns. The Board issued an intent-to-deny with a vote of 0-9. The applicant appeared again at the January 1999 meeting and was denied a second time by a vote of 3-9. The project went to administrative hearing and as of May 2001 was still in that process.

**Exhibit 4-5
AREAS WITH NURSING HOME BED NEED OR EXCESS BEDS**



Note: See Appendix G for actual and needed nursing home beds by county.
Source: April 2001 Planning Board data summarized by OAG.

Again, the Board appeared to be considering factors outside of the established criteria. In this case, the entity attempted to proceed with the project under a separate corporation and the Board took legal action to try to stop them. Although construction on the project was resumed, court cases were still pending at the close of our audit work.

Denied Nursing Home

The applicant proposed to construct a long term care facility with 112 beds in McLean County. The bed Inventory in March of 1999 showed a need for 161 beds in the planning area. The project received three negative findings in the supplemental State Agency Report. Under the Establishment of Additional Beds criterion, the State Agency Report stated that 9 of the 13 existing long term care providers were below 90% target occupancy. Six of the facilities below the target occupancy did not have restrictive admissions policies and were available to patients in the planning area. Therefore, access to the service would not be improved. This also caused the Alternatives criterion to be negative. For the Size of the Project criterion, the applicant did not document enough referrals to achieve a 90% target occupancy within two years.

At the September 1999 Board meeting, the applicant contested the occupancy figures in the State Agency Report. The applicant stated that three separate phone surveys they conducted revealed that the average occupancy rates for all the facilities were right at 90 percent. However, the applicant failed to provide documentation of the phone surveys. The Board issued an intent-to-deny with 1 yes vote and 12 no votes and requested the applicant provide documentation of the phone surveys. At the March 2000 Board meeting, the applicant stated that they had done another phone survey that showed the same results as the other surveys. However, the applicant failed to provide documentation of those phone surveys even though it was requested at the previous meeting. The Board issued an initial denial with 0 yes votes and 12 no votes. The applicant waived their right to an administrative hearing and was issued a final denial in June 2000. This was the only final denial in Fiscal Year 2000.

The Board's decision to deny the project was supported by the applicant's failure to provide documentation of their phone surveys. However, there was a contradiction between the occupancy levels of the existing facilities and Public Health's Bed Inventory for McLean County. The April 2001 Inventory still shows a need for 180 beds in the McLean County planning area. Exhibit 4-5 is a map that shows counties where the Inventory indicates excess nursing home beds or where nursing home beds are needed. McLean County has the largest population with bed need in the State and has the largest number of beds needed with 180. In this case the Board seems to have discounted the importance of the Inventory which may be adversely impacting patient access to nursing home care in McLean County. Appendix G shows the detailed data on actual nursing home beds and needed nursing home beds by county.

Statement of Board Findings

Issuing a statement of findings could help applicants and potential applicants to understand the Board's decision making process. For approved projects, a statement of findings could be helpful for future applicants so they could see the Board's reasoning in approving projects that do not meet all of the applicable criteria. For denied projects, a statement of

findings could provide guidance to the applicant on what they need to do to gain approval from the Board.

STATEMENT OF BOARD FINDINGS	
RECOMMENDATION 7	<p><i>The Board should consider issuing a statement of findings for why a project is approved or denied. This should be done for all projects approved as well as projects receiving an intent-to-deny, an initial denial, and a final denial. For denials, this statement should not just reiterate the criteria not met in the State Agency Report since most projects are approved without meeting all criteria.</i></p>
HEALTH FACILITIES PLANNING BOARD RESPONSE	<p>The State Board has considered the issue of written findings in the past and will consider this matter again by the end of the year. The State Board concurs that applicants are entitled to know the basis of approval or disapproval. To assist applicants and interested parties, the State Board has utilized a court reporter to transcribe the entire proceedings of State Board meetings. Nonetheless, many applicants may desire comments or specific citations from Board members with respect to what criteria are adequately met or not met. The State Board will explore various options with respect to addressing this recommendation.</p>

APPENDICES

APPENDIX A
Public Act 91-0782
(20 ILCS 3960/19.5 new)

From Public Act 91-0782 (20 ILCS 3960/19.5 new):

SEC. 19.5. AUDIT.

Upon the effective date of this amendatory Act of the 91st General Assembly, the Auditor General must commence an audit of the State Board to determine:

- (1) whether the State Board can demonstrate that the certificate of need process is successful in controlling health care costs, allowing public access to necessary health services, and guaranteeing the availability of quality health care to the general public;
- (2) whether the State Board is following its adopted rules and procedures;
- (3) whether the State Board is consistent in awarding and denying certificates of need; and
- (4) whether the State Board's annual reports reflect a cost savings to the State.

The Auditor General must report on the results of the audit to the General Assembly.

This Section is repealed when the Auditor General files his or her report with the General Assembly.

APPENDIX B

Audit Sampling and Methodology

APPENDIX B

AUDIT SAMPLING AND METHODOLOGY

We obtained and reviewed information from the Department of Public Health relating to the Illinois Health Facilities Planning Board. State agency staff at Public Health do many of the administrative tasks for the Planning Board. We also attended Planning Board meetings and Public Hearings during the audit to observe the Board in action. The information reviewed included statutes, administrative rules, Board vote tallies and minutes, and the State Agency Reports prepared by State agency staff that analyze the certificate of need applications and compare applicant information to criteria established in administrative rules. We also interviewed State agency staff at Public Health who work on Planning Board activities and interviewed the Chairman of the Planning Board.

To analyze the health care industry's perception of the Board's work we sent letters to eight health care associations telling them of our audit and offering to meet or speak with them if they had comments related to our audit's determinations. The associations were the County Nursing Home Association of Illinois, Illinois Association of Rehabilitation Facilities, Illinois Council on Long Term Care, Illinois Freestanding Surgery Association, Illinois Health Care Association, Illinois Hospital & Health Systems Association, Illinois State Medical Society, and Life Services Network of Illinois. We were contacted by five of the associations and met with two of them.

In conducting the audit, we reviewed federal law as well as State statutes governing certificate of need. We reviewed compliance with those laws to the extent necessary to meet the audit's objectives. Any instances of non-compliance are noted as findings in this report.

The previous financial, compliance, and performance audits released by the Office of the Auditor General for Public Health were reviewed to identify any issues related to the Planning Board and general issues relating to internal controls. We reviewed management controls relating to the audit objectives which were identified in Public Act 91-782 (see Appendix A). This audit identified no internal control weaknesses other than those relating to non-compliance with administrative rules noted in the report.

TESTING AND ANALYTICAL PROCEDURES

We tested all applications that were considered by the Planning Board for which there was a final disposition in Fiscal Year 2000. There were 130 such decisions in that year. For these cases we did a detailed review of the State Agency Report and tested to assure that the correct Administrative Rule requirements were applied and that they were applied correctly. We also compared the State Agency Report results to the decision that was made by the Planning Board.

To assure that the State Agency Reports were reflective of the submitted application we tested a sample of applications. We also collected dates from applications to allow us to test the timeliness of the approval process.

The Health Facilities Planning Board does not rely significantly on computer processed data and as a result, our audit did not need to include specific steps to assure the quality of computer processed data.

APPENDIX C
Members of the Illinois
Health Facilities Planning Board

APPENDIX C

MEMBERS OF THE ILLINOIS

HEALTH FACILITIES PLANNING BOARD

Pam Taylor, Chair
Danville - Professional Nursing

William A. Marovitz
Chicago - Consumer

Marjorie Albrecht, Vice Chairman
Princeton - Consumer

William J. Marshall, Jr., M.D.
Plainfield - Physician

Thomas P. Beck
Glenview - Consumer

Eric L. Myers
Wheaton – Ambulatory Surgery

Fred Benjamin
Glencoe - Long Term Care

Joyce Washington
Chicago - Hospitals

Robert T. Clarke
Springfield - Hospital Management

Bernard Weiner
Kankakee – Commercial Insurance

Michael Gonzalez
Chicago - Consumer

Richard W. Wright
E. Peoria - Consumer

Ernest Jenkins
Chicago - Consumer

John Lumpkin, M.D., Director
Illinois Department of Public Health
Ex-Officio Non-Voting Member

Stuart Levine
Highland Park - Consumer

Jackie Garner, Director
Illinois Department of Public Aid
Ex-Officio Non-Voting Member

Lou Libert
Naperville - Consumer

Linda Renee Baker, Secretary
Illinois Department of Human Services
Ex-Officio Non-Voting Member

Source: Public Health Data as of July 2001

APPENDIX D
Bibliography of Research Studies

APPENDIX D

BIBLIOGRAPHY OF RESEARCH STUDIES

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APPENDIX E
Sample State Agency Report

STATE AGENCY REPORT

Sample Project
Chicago, Illinois
Project #00-000

I. The Proposed Project

This project proposes the renovation, upgrade, and construction of areas for long term medical care for children. The project proposes to reduce the number of beds from 77 to 49 and place all inpatient services on the same floor. The design will be accomplished by adding a second floor above one hospital structure. In additional information provided, the applicant revised the proposal to not renovate a patient unit that would have included behavioral medicine, respiratory therapy, education, and infusion therapy.

The total estimated project cost is \$13,093,300.

II. Summary of Findings

- A. The State Agency finds that the proposed project does not appear to be in conformance with the provisions of Part 1110.
- B. The State Agency finds that the proposed project does not appear to be in conformance with the provisions of Part 1120.

III. General Information

The applicant is located in Chicago.

The applicant is located in Cook County, HSA VI, which is the only area in the State with long term medical care for children. There is one other long term medical care for children facility in the planning area and the State.

This is a substantive project which is subject to both a Part 1110 and a Part 1120 review.

The projected completion date for this project is June 2002.

An opportunity for public hearing was offered on this project; however, no hearing was requested.

The hospital currently has a total of 77 beds. Table I shows the applicant's number of beds, the respective average daily census(ADC), average length of stay (ALOS) and occupancy rates for July 1998 through June 1999.

Table I

Category of Service	Number Of Beds	Average Length of Stay	Average Daily Census	Occupancy %
Other	77	10.1	33.5	43.5%

IV. The Proposed Project – Details

The applicant is proposing the renovation, upgrade and construction of a new area for long term medical care for children. The project proposes to reduce the number of beds from 77 to 49 and place all inpatient services on the same floor. Table II outlines the present and proposed GSF of each department involved in the project.

Table II

	New GSF	As Is	Total GSF
Inpatient Beds	17,130	4,400	21,530
Elevators and Lobbies	1,320		1,320
Support	500		500
Loading Dock	300		300
Total	19,250	4,400	23,650

V. Project Sources and Uses of Funds

The applicant proposes to fund the project with \$1,542,851, in cash and securities; \$480,800 in pledges; \$4,069,649 in gifts and bequests; and \$7,000,000 in a bond issuance. Table III shows the project’s proposed uses of funds.

Table III

Pre-planning Costs	225,000
Site Survey	30,000
Site Preparation	264,100
Off Site Work	0
New Construction Costs	8,320,182
Modernization Contracts	NA
Contingencies	832,018
Architect’s Fees	863,000
Consultants/Other Fees	521,000
Capital Equipment	1,030,000
Bond Issuance Expense	117,000
Net Interest Expense During	216,000

Construction	
Other Costs	675,000
Total	13,093,300

VI. Review Criteria –Modernization

A. Criterion 1110.420.a., Modernization of Beds

The applicant is proposing to modernize 49 beds for long term medical care for children. The applicant states that the building was constructed in the early 1930's and has several deficiencies. Patient toilet rooms are not accessible to wheelchairs and do not allow staff to assist patients. The rooms accommodating 3 or 4 people do not facilitate security nor infection control. The rooms cannot accommodate the equipment required to treat patients and space allocation for the inpatient unit is below the State Standard.

The historical utilization will not justify the modernization of a 49 bed unit. Given the 12,234 patient days from July 1998 to June 1999, and the State Agency guideline for modernization of beds at 80%, it appears that the hospital can justify a unit with 42 beds. The applicant is proposing a unit with 49 beds, therefore, a negative finding must be made.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

B. Criterion 1110.420.b., Modern Facilities

1. Patient Bed Area

As stated in the application, the building was constructed in the early 1930's and has several deficiencies. Patient toilet rooms are not accessible to wheelchairs and do not allow staff to assist patients. The rooms accommodating 3 or 4 people do not facilitate security nor infection control. The rooms cannot accommodate the equipment required to treat patients and space allocation for the inpatient unit is below state standards. It appears that the unit is deteriorated and needs modernization.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

2. Other Support Areas

Areas are being added to support the new inpatient unit. These areas will be in 500 GSF. These areas will include consultation rooms, waiting areas, public toilets, staff lounge, staff lockers, and staff toilets.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

VII. Review Criteria - General

A. Criterion 1110.230.a, Location

After reviewing the zip code data provided by the applicant, it appears that the primary purpose and intent of the project is to serve the needs of the planning area.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

B. Criterion 1110.230.b., Background of Applicant

It appears that the applicant has demonstrated that it is fit, willing and able and has the qualifications, background and character to adequately provide a proper standard of health care service for the community.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

C. Criterion 1110.230.e., Alternatives

The applicant has investigated several alternatives to the proposed project as outlined in Attachment GRC-3 to the application. While it appears that the existing departments are in need of modernization, it appears that a fewer number of beds are more appropriate considering the facility's historical utilization.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

D. Criterion 1110.230.f., Need for the Project

The applicant has justified the need for the modernization. However, the historical utilization does not support the need for 49 beds. Therefore, a negative finding must be made on this criterion.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

E. Criterion 1110.230.g., Size of the Project

The patient bed area will contain a total of 21,530 GSF with 49 beds. There will be 439.39 GSF per bed. There are no State Agency guidelines for long term medical care for children.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

VIII. Review Criteria-Financial Feasibility

A. Criterion 1120.210.a., Financial Viability

The applicant has provided their latest three years audited financial statements as well as their projected statements through the first full fiscal year after project completion. The applicant's statistics in comparison to State standards are listed below.

<u>Measure</u>	State <u>Standard</u>	<u>1997</u> <u>1998</u> <u>1999</u> <u>2004</u>			
		Current Ratio	1.5x or more	2.6	4.6
Net Margin Percentage	3.5% or more	5.4%	6.2%	4.4%	3.6%
Debt Capitalization Ratio	60% or less	0	0	0	19.2
Debt Service Coverage	1.75x or more	75	NA	NA	8
Days Cash on Hand	90 days or more	77	107	129	199.6

As seen in the table, the State Agency finds that the applicant's historical current days cash on hand are below State standards in 1997.

There is no variance available to the applicant and, therefore, the State Agency cannot make a positive finding.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

B. Criterion 1120.210.b., Availability of Funds

The applicant proposes to fund the project with \$1,542,851, in cash and securities; \$480,800 in pledges; \$4,069,649 in gifts and bequests; and \$7,000,000 in a bond issuance. This bond issue will be through variable rate demand bonds through the Illinois Development Finance Authority. The cash appears to be available, however, the applicant did not provide documentation on the availability of pledges, gifts, or bond commitments.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

C. Criterion 1120.210.c., Start-Up Costs

The applicant does not anticipate any start-up costs as a result of this project.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

IX. Review Criteria-Economic Feasibility

A. Criterion 1120.310.a., Reasonableness of Financing Arrangements

The applicant's balance sheet as of June 30, 1999 shows \$207,627 in cash, \$8,867,224 in investments and \$2,767,479 limited use funds. It is not clear what the investments are, however, the applicant could explore the use of these funds. It does not appear that all available cash and securities are being used toward project funding prior to borrowing.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

B. Criterion 1120.310.b., Terms of Debt Financing

The applicant proposes a variable rate demand bond issue in the amount of \$7,000,000 to finance this. The term of debt is 30 years at 4.75% through the Illinois Development Finance Authority. No proof of commitment is provided.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

C. Criterion 1120.310.c., Costs of Debt Financing

The applicant proposes, for the first full fiscal year after project completion (FY2003), the projected debt service cost per adjusted patient day to amount to \$19.63. There is no standard for this category of service.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

D. Criterion 1120.310.d., Reasonableness of Project Cost

New Construction - New construction contracts and proportionate contingencies amount to \$9,152,220. The new area will consist of 19,250 GSF or \$475.44 per GSF. This appears high compared to the hospital Means' adjusted third quartile statistic is \$267.71 per GSF.

Contingencies - The applicant is requesting a contingency allowance of \$832,018 or 10 percent of new construction. This amount appears reasonable in comparison to the State standard of 10 and 15 percent respectively.

Architectural Fees - These fees amount to \$863,000 or 9.4 percent of contracts and contingencies. This amount does not appear reasonable in comparison to the State standard of 7.16 for hospitals and nursing facilities.

Preplanning Costs - These costs amount to \$225,000 or 2.2 percent of equipment, contracts and contingencies. This amount appears high in comparison to the State standard of 1.8 percent.

Site Preparation & Site Survey - These costs amount to \$294,100 or 3.2 percent of contracts and contingencies. This amount appears reasonable in comparison to the State standard of 5 percent.

Equipment - These costs amount to \$1,030,000 for various pieces of equipment. In that no vendor analysis is required, such costs appear reasonable.

Other Costs - The applicant projects bond issuance expenses of \$117,000, net interest expenses of \$216,000 through the construction period and \$675,000 for other costs. These costs appear reasonable in comparison to such a bond issue and construction time frame.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

E. Criterion 1120.310.e. Reasonableness of Resultant Operating Cost

The applicant did not provide this information for the revised project.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

F. Criterion 1120.310.f., Capital Costs

The applicant has projected their FY2003 capital costs to amount to \$1,909,267. This amount, when compared to the adjusted patient days of 16,934, amounts to \$112.75 per adjusted patient day. There is not a State standard for this category of service.

THE STATE AGENCY FINDS THAT THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE ABOVE REVIEW CRITERION.

APPENDIX F
Certificate of Need
Applications and Approvals
By County for Fiscal Year 2000

Appendix F
CERTIFICATE OF NEED APPLICATIONS AND APPROVALS
 By County for Fiscal Year 2000

<i>County</i>	<i>Total Dollars Approved</i>	<i>Total Number of applications</i>	<i># Approved at 1st review</i>	<i># Approved at 2nd review</i>	<i># Approved at 3rd review</i>	<i># Withdrawn</i>	<i># Denied</i>	<i># of Deferrals</i>
Adams	\$20,512,179	3	3	0	0	0	0	0
Alexander	no applications							
Bond	no applications							
Boone	\$0	2	2	0	0	0	0	0
Brown	no applications							
Bureau	\$966,500	2	2	0	0	0	0	0
Calhoun	no applications							
Carroll	no applications							
Cass	no applications							
Champaign	\$12,678,773	3	3	0	0	0	0	0
Christian	no applications							
Clark	no applications							
Clay	no applications							
Clinton	no applications							
Coles	no applications							
Cook	\$345,691,241	55	46	0	1	8	0	13
Crawford	no applications							
Cumberland	no applications							
DeKalb	\$12,896,946	1	1	0	0	0	0	0
DeWitt	\$0	1	0	0	0	1	0	1
Douglas	no applications							
DuPage	\$38,263,530	12	10	0	0	2	0	0

Source: Health Facilities Planning Board Data Summarized by the OAG

Appendix F
CERTIFICATE OF NEED APPLICATIONS AND APPROVALS
 By County for Fiscal Year 2000

<i>County</i>	<i>Total Dollars Approved</i>	<i>Total Number of applications</i>	<i># Approved at 1st review</i>	<i># Approved at 2nd review</i>	<i># Approved at 3rd review</i>	<i># Withdrawn</i>	<i># Denied</i>	<i># of Deferrals</i>
Edgar	no applications							
Edwards	no applications							
Effingham	no applications							
Fayette	no applications							
Ford	no applications							
Franklin	\$342,300	1	1	0	0	0	0	0
Fulton	no applications							
Gallatin	\$0	1	1	0	0	0	0	0
Greene	no applications							
Grundy	\$2,156,297	2	2	0	0	0	0	0
Hamilton	no applications							
Hancock	no applications							
Hardin	no applications							
Henderson	no applications							
Henry	no applications							
Iroquois	no applications							
Jackson	\$0	1	0	0	0	1	0	1
Jasper	no applications							
Jefferson	\$2,514,000	1	1	0	0	0	0	3
Jersey	no applications							
Jo Daviess	no applications							
Johnson	no applications							

Source: Health Facilities Planning Board Data Summarized by the OAG

Appendix F
CERTIFICATE OF NEED APPLICATIONS AND APPROVALS
 By County for Fiscal Year 2000

<i>County</i>	<i>Total Dollars Approved</i>	<i>Total Number of applications</i>	<i># Approved at 1st review</i>	<i># Approved at 2nd review</i>	<i># Approved at 3rd review</i>	<i># Withdrawn</i>	<i># Denied</i>	<i># of Deferrals</i>
Kane	\$25,790,321	4	4	0	0	0	0	2
Kankakee	no applications							
Kendall	\$3,504,100	1	1	0	0	0	0	1
Knox	no applications							
Lake	\$117,354,669	6	6	0	0	0	0	0
LaSalle	no applications							
Lawrence	no applications							
Lee	no applications							
Livingston	\$4,405,000	1	1	0	0	0	0	0
Logan	no applications							
Macon	no applications							
Macoupin	no applications							
Madison	\$12,520,706	2	1	0	1	0	0	0
Marion	no applications							
Marshall	no applications							
Mason	no applications							
Massac	no applications							
McDonough	no applications							
McHenry	\$3,541,200	1	1	0	0	0	0	0
McLean	\$5,051,672	3	2	0	0	0	1	2
Menard	no applications							
Mercer	no applications							

Source: Health Facilities Planning Board Data Summarized by the OAG

Appendix F
CERTIFICATE OF NEED APPLICATIONS AND APPROVALS
 By County for Fiscal Year 2000

<i>County</i>	<i>Total Dollars Approved</i>	<i>Total Number of applications</i>	<i># Approved at 1st review</i>	<i># Approved at 2nd review</i>	<i># Approved at 3rd review</i>	<i># Withdrawn</i>	<i># Denied</i>	<i># of Deferrals</i>
Monroe	no applications							
Montgomery	no applications							
Morgan	no applications							
Moultrie	no applications							
Ogle	\$0	1	1	0	0	0	0	0
Peoria	\$63,331,102	4	3	1	0	0	0	2
Perry	no applications							
Piatt	no applications							
Pike	no applications							
Pope	no applications							
Pulaski	no applications							
Putnam	no applications							
Randolph	\$0	1	1	0	0	0	0	0
Richland	no applications							
Rock Island	\$2,193,120	2	1	0	0	1	0	0
Saline	\$4,513,483	1	1	0	0	0	0	0
Sangamon	no applications							
Schuyler	no applications							
Scott	no applications							
Shelby	\$9,000,000	1	1	0	0	0	0	0
St. Clair	\$0	1	0	0	0	1	0	0
Stark	no applications							

Source: Health Facilities Planning Board Data Summarized by the OAG

Appendix F
CERTIFICATE OF NEED APPLICATIONS AND APPROVALS
 By County for Fiscal Year 2000

<i>County</i>	<i>Total Dollars Approved</i>	<i>Total Number of applications</i>	<i># Approved at 1st review</i>	<i># Approved at 2nd review</i>	<i># Approved at 3rd review</i>	<i># Withdrawn</i>	<i># Denied</i>	<i># of Deferrals</i>
Stephenson	no applications							
Tazwell	no applications							
Union	no applications							
Vermillion	\$8,305,543	5	2	0	3	0	0	2
Wabash	no applications							
Warren	no applications							
Washington	\$0	1	1	0	0	0	0	0
Wayne	no applications							
White	no applications							
Whiteside	no applications							
Will	\$25,263,759	6	4	0	0	2	0	1
Williamson	no applications							
Winnebago	\$32,926,920	4	2	0	0	2	0	2
Woodford	no applications							

TOTALS \$753,723,361 130 105 1 5 18 1 30

Source: Health Facilities Planning Board Data Summarized by the OAG

APPENDIX G
Nursing Home Beds
Actual Compared to Need
By County as of April 2001

Appendix G
NURSING HOME BEDS -- ACTUAL COMPARED TO NEED
 By County as of April 2001

County	Actual Beds Built or Approved	Needed Beds	Excess or (Needed) Beds	% Beds over Need or % (Under Need)
Adams	1,519	1,392	127	9%
Alexander/Pulaski	147	156	(9)	(6%)
Bond	254	180	74	41%
Boone	278	328	(50)	(15%)
Brown/Schuyler	216	198	18	9%
Bureau/Putnam	445	489	(44)	(9%)
Calhoun/Pike	373	288	85	30%
Carroll	267	252	15	6%
Cass	270	216	54	25%
Champaign	1,151	1,099	52	5%
Christian	570	495	75	15%
Clark	287	253	34	13%
Clay	209	151	58	38%
Clinton	407	396	11	3%
Coles/Cumberland	944	806	138	17%
Cook Chicago	18,631	15,314	3,317	22%
Cook Suburban and DuPage	29,953	24,687	5,266	21%
Crawford	245	191	54	28%
Cumberland see Coles				
DeKalb	733	666	67	10%
DeWitt	210	230	(20)	(9%)
Douglas	234	309	(75)	(24%)
DuPage see Cook Suburban				

Source: Public Health Data Summarized by OAG.

Appendix G
NURSING HOME BEDS -- ACTUAL COMPARED TO NEED
 By County as of April 2001

County	Actual Beds Built or Approved	Needed Beds	Excess or (Needed) Beds	% Beds over Need or % (Under Need)
Edgar	289	283	6	2%
Edwards/Wabash	293	212	81	38%
Effingham	450	367	83	23%
Fayette	359	263	96	37%
Ford	400	346	54	16%
Franklin	521	430	91	21%
Fulton	732	543	189	35%
Gallatin/Hamilton/Saline	839	838	1	0%
Greene	159	125	34	27%
Grundy	307	307	-	0%
Hamilton see Gallatin				
Hancock	245	205	40	20%
Hardin/Pope	132	133	(1)	(1%)
Henderson/Warren	352	358	(6)	(2%)
Henry	594	504	90	18%
Iroquois	675	499	176	35%
Jackson	520	460	60	13%
Jasper	92	98	(6)	(6%)
Jefferson	424	402	22	5%
Jersey	331	337	(6)	(2%)
Jo Daviess	155	181	(26)	(14%)
Johnson/Massac	402	368	34	9%
Kane	2,620	2,312	308	13%

Source: Public Health Data Summarized by OAG.

Appendix G
NURSING HOME BEDS -- ACTUAL COMPARED TO NEED
 By County as of April 2001

County	Actual Beds Built or Approved	Needed Beds	Excess or (Needed) Beds	% Beds over Need or % (Under Need)
Kankakee	1,549	1,046	503	48%
Kendall	178	204	(26)	(13%)
Knox	1,128	965	163	17%
Lake	4,779	4,122	657	16%
LaSalle	1,358	1,261	97	8%
Lawrence	497	399	98	25%
Lee	465	447	18	4%
Livingston	582	538	44	8%
Logan	459	452	7	2%
Macon	1,410	1,383	27	2%
Macoupin	857	769	88	11%
Madison	2,485	2,324	161	7%
Marion	668	590	78	13%
Marshall/Stark	418	401	17	4%
Mason	164	140	24	17%
Massac see Johnson				
McDonough	419	415	4	1%
McHenry	1,016	920	96	10%
McLean	1,118	1,298	(180)	(14%)
Menard	192	164	28	17%
Mercer	213	180	33	18%
Monroe	404	338	66	20%
Montgomery	690	582	108	19%

Source: Public Health Data Summarized by OAG.

Appendix G
NURSING HOME BEDS -- ACTUAL COMPARED TO NEED
 By County as of April 2001

County	Actual Beds Built or Approved	Needed Beds	Excess or (Needed) Beds	% Beds over Need or % (Under Need)
Morgan/Scott	738	602	136	23%
Moultrie	413	386	27	7%
Ogle	554	501	53	11%
Peoria	1,967	1,832	135	7%
Perry	260	272	(12)	(4%)
Piatt	160	154	6	4%
Pike see Calhoun				
Pope see Hardin				
Pulaski see Alexander				
Putnam see Bureau				
Randolph	595	571	24	4%
Richland	307	213	94	44%
Rock Island	1,270	1,090	180	17%
Saline see Gallatin				
Sangamon	1,510	1,359	151	11%
Schuyler see Brown				
Scott see Morgan				
Shelby	300	239	61	26%
St. Clair	3,031	2,622	409	16%
Stark see Marshall				
Stephenson	588	558	30	5%
Tazewell	1,421	1,289	132	10%
Union	293	218	75	34%

Source: Public Health Data Summarized by OAG.

Appendix G
NURSING HOME BEDS -- ACTUAL COMPARED TO NEED
 By County as of April 2001

County	Actual Beds Built or Approved	Needed Beds	Excess or (Needed) Beds	% Beds over Need or % (Under Need)
Vermilion	834	763	71	9%
Wabash see Edwards				
Warren see Henderson				
Washington	263	222	41	18%
Wayne	169	142	27	19%
White	401	328	73	22%
Whiteside	840	686	154	22%
Will	2,508	2,458	50	2%
Williamson	710	564	146	26%
Winnebago	2,459	2,354	105	4%
Woodford	599	610	(11)	(2%)
Statewide	<u>111,473</u>	<u>96,638</u>	<u>14,835</u>	<u>15%</u>

Source: Public Health Data Summarized by OAG.

APPENDIX H

Agency Responses

Note: This Appendix contains the complete written responses of the Health Facilities Planning Board and of the Department of Public Health. Following the Agency Responses are 3 numbered Auditor Comments. Numbers for the comments appear in the margins of the Agency Response.



STATE OF ILLINOIS
HEALTH FACILITIES PLANNING BOARD
525 WEST JEFFERSON STREET • SPRINGFIELD, ILLINOIS 62761 • (217)782-3516

September 7, 2001

Ed Whittrock, Audit Manager
Office of the Auditor General
Iles Park Plaza
740 East Ash Street
Springfield, IL 62703-3154

Dear Mr. Whittrock:

On behalf of the Illinois Health Facilities Planning Board (State Board), I am enclosing the State Board's response to Audit of the Health Facilities Planning Board. If there are any questions or if further information is required, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Pam Taylor".

Pam Taylor, Chairman
Health Facilities Planning Board

Enclosure

cc: Members, Health Facilities Planning Board



STATE OF ILLINOIS
HEALTH FACILITIES PLANNING BOARD
525 WEST JEFFERSON STREET • SPRINGFIELD, ILLINOIS 62761 • (217)782-3516

Response to Office of the Auditor General
Audit of the Health Facilities Planning Board

Introduction

The Health Facilities Planning Board (State Board) appreciates the opportunity to respond to the Auditor General's Audit of the Health Facilities Planning Board (Report). The comments that are presented by the State Board have been developed after careful review and consideration of the Report and reflect the unanimous opinion of the State Board's fifteen members. The response is presented in two sections. Section 1 provides general comments concerning the Report's findings; Section 2 provides a response to the Report's seven recommendations.

The State Board appreciates the complexity of the assignment that the Auditor General's staff has dealt with over the past fourteen months and wishes to acknowledge the professionalism and courtesies exhibited by the audit team in conducting its research and in its dealing with members of the State Board and staff of the Department of Public Health. The audit team performed a thorough and comprehensive review of the certificate of need process, reviewed all of the certificate of need decisions during FY 2000, reviewed applications and contested cases from other years, attended State Board meetings and public hearings during FY 2001, evaluated data concerning certificate of need programs in other jurisdictions, contacted and met with some provider organizations, and researched literature concerning certificate of need from as far back as the 1970's and 1980's.

The State Board notes that the Report does not contain any findings indicating that the State Board has exceeded its statutory authority. The Report also stated that the vast majority of projects are processed quickly and in accordance with prescribed review criteria and procedures. Furthermore, the State Board believes that most of the Report's recommendations may be addressed expeditiously; and, if required, changes can be implemented through minor revisions to existing rules. In addition, the State Board finds that nearly all of the cases pertaining to the Report's recommendations involve applications with unusual and atypical circumstances and are not reflective of nor similar to the vast majority of certificate of need applications reviewed.

Section 1- General Comments

1. Program Effectiveness.

Although the Report made several references to various studies that have evaluated

certificate of need (CON) programs, there is a wide variation in the mission and scope of CON programs from state to state. Therefore, it is difficult to apply findings from studies of other states' CON programs and draw specific conclusions that can be applied to the Illinois program. In assessing program effectiveness, the Report examines several areas that essentially deal with whether CON programs restrain rising health care costs, affect quality of care, and improve access to health care resources. The Report acknowledges the difficulty in assessing the impact upon cost containment due to such factors as the "sentinel effect" and also questions whether access and quality are positively impacted by CON programs.

The State Board believes that the Illinois CON program, founded with a basis of addressing regional and community needs through comprehensive health planning, has assisted in containing health care costs, in promoting high quality of care, and in directing the development of health care facilities, beds, equipment, and services in an attempt to improve access for Illinois residents. Specifically the State Board believes that access has been improved through planning efforts in such areas as the development of various "need" methodologies and in the identification of geographic areas or population groups for which there may be a shortage or excess capacity of various facilities and services.

Admittedly, quantifying or measuring the success of the program is difficult; however, the State Board believes there have been several noteworthy accomplishments with respect to minimizing unnecessary duplication of facilities and services, including the prevention of unneeded new hospitals and long-term care facilities in many areas of the State. Unneeded development is inflationary and results in increased health care costs to Illinois residents. In addition, the planning process has assisted in encouraging the development of resources in geographic areas that were underserved or lacked certain types of facilities or services. Specific examples include the prevention of continued over-development of long-term care facilities on Chicago's North Shore and the development of such facilities in communities that lacked an adequate supply, such as East St. Louis and certain areas of Chicago.

With respect to issues of quality, the Report correctly speaks to the correlation between high volume and successful outcomes for many services. While the CON program's purview is limited to the development of new services in certain settings, the State Board has frequently incorporated professionally recognized standards of quality care into its regulations for use in assessing CON applications. The State Board presently lacks legislative authority to "de-certify" or "terminate" programs that do not achieve or maintain high volume or that do not meet quality of care standards. Such responsibility lies with licensing and certification authorities. The State Board believes, however, that the incorporation of quality standards into the CON review process provides guidance to providers and assists in the development of services that will operate at sufficient capacity to assure that high quality is provided in a cost effective manner. Specific examples of quality standards that are utilized in the CON review process include volume requirements with respect to cardiac catheterization, open heart surgery, and an appropriate urea reduction ratio for kidney disease treatment facilities.

In addition, many of the State Board's review criteria are intended to foster competition and to achieve cost effective as well as high quality programs. While this approach may appear to contradict the statute's goal of preventing unnecessary duplication of services, the State Board believes that the protection or "franchising" of low volume providers that have had ample time to achieve professionally recognized quality utilization targets is contrary to the Planning Act's purpose of establishing a delivery system that "will guarantee the availability of quality health care to the general public." While sufficient time should be afforded for providers to initiate new services and to achieve target utilization and quality standards, the consistent failure of some providers to realize high volume and quality standards should not preclude entry into the market.

2. Program Operations.

1 The Report makes several references to the length of time required for CON reviews, application fees, and staff resources. Much of the data was derived from information that states provide to the American Health Planning Association (AHPA). The State Board is concerned that simple comparisons of the data presented in the AHPA report may not adequately address the wide variation that occurs among the 37 certificate of need programs that were cited in the AHPA inventory. The State Board believes the following observations should be noted with respect to operation of the Illinois CON program.

- The Report speaks to the length of time that occurs on "average" before a final decision is made by the State Board. The Report states that the "average" time for the 130 projects receiving final action during FY 2001 was 125 days from the time the application was deemed complete until final action by the State Board. However, a review of the data provided in Exhibit 3-3 also indicates that of the 111 projects that were approved by the State Board, 95% were approved upon initial consideration with an average processing time of less than 90 days. Clearly the "average" is significantly distorted by those applications that fail to comply with prescribed criteria and that require re-review and, if denied, pursue an administrative hearing process. Moreover, the length of the review process is influenced by several statutory provisions that are intended to assure full and due process for the regulated community and for community input as explained below.

While the State Board notes that the vast majority of applications are processed expeditiously and as quickly as possible, there are two provisions in the Illinois statute that hamper a review in a shorter time frame. First, the Health Facilities Planning Act *requires* an opportunity for a public hearing on *every CON application* (other than emergency projects) and that the Department of Public Health conduct such a hearing if one is requested by any person. This tenet has had wide legislative support over the 27-year history of the CON program, and the State Board has no authority to waive this requirement. Consequently ample time must be afforded to provide for community input and to conduct a public hearing, if one is requested, on

each CON application (emergency projects are statutorily exempt from this provision). Second, the Planning Act contains a provision that is unique to the Illinois CON program—specifically the “intent to deny” provision. By statute the State Board *cannot deny an application upon initial consideration*. As a result, whenever an application fails to receive the required statutory number of votes for approval, an “intent to deny” is issued, and the applicant has another opportunity to gather information and to appear before the State Board at a subsequent meeting. These two features of Illinois’ program add time to the review process. Undoubtedly projects that receive an “intent to deny,” as well as those that are denied and subsequently proceed to an administrative hearing, can disproportionately skew the “average” length of time in the review process.

- The Report also mentioned the time associated with completeness reviews, deferrals, and modifications as factors that contribute to the length of time required before a final decision is received. The State Board believes that such extensions or delays are essentially caused by and directly attributable to poorly developed applications. State Board rules provide that potential applicants seek assistance from the Department staff and have a pre-application conference if desired before submitting an application. The failure on the part of an applicant to submit a properly crafted application often results in that application not meeting prescribed completeness requirements and may also result in subsequent extensions of the review period, deferrals, or modifications. Such occurrences by an applicant can cause delays in receiving action from the State Board. *The State Board has always encouraged and continues to urge applicants to utilize the technical expertise of staff and to address and meet the published review standards and criteria.*

- There were several references in the Report to program budget, staff size, and application fees. Once again the data source for this information was the AHPA. As mentioned previously, CON programs vary greatly from state to state in such areas as scope, authority, and program design. Therefore, it is inappropriate to infer or draw conclusions as to whether the costs and resources dedicated to the planning and CON review functions are comparable among state programs. For instance, the Report cites Illinois as having the highest CON “maximum” application fee of \$100,000. The Report does not mention, however, that the AHPA report also states that several states do not even have maximum fees (e. g. neighboring Kentucky and Missouri as well as Massachusetts, Montana, New York, Rhode Island, and West Virginia). In fact, Exhibit 1-3 points out that the fee for a \$50 million project in Illinois is \$100,000 while the fee for a \$50 million project in New York is \$201,000, or more than double the Illinois fee. The Report also cites Illinois’ budget of \$1.6 million as being “second only to Florida’s (\$3.5 million)” and having a staff size of 13 as the “fourth largest staff with North Carolina.” The Report did note that New York had the largest staff with 60. However, since the AHPA report did not provide budget figures for New York, its program costs were not considered in the analysis.

The State Board has previously noted that the Health Facilities Planning Act contains a planning component as well as a CON component. Department staff are responsible for a variety of activities including the gathering and analysis of data from over 1,500 health care facilities; the development of planning policies, rules, reports and studies; the management of public hearings; the provision of administrative support to the State Board, and performing the statutorily mandated CON review activities for the Department. In addition, it should be noted that since the latest amendments to the Planning Act became effective on June 9, 2000, staff has decreased from 16 FTE to a current level of 10 FTE.

It is also important to recognize that the expenses associated with the Illinois program are funded through application processing fees and fines that are deposited into the Health Facilities Planning Fund. No general revenue funds support Planning Act activities. Without examining the comparability of state CON programs with respect to factors such as the scope of coverage, organizational structure, data collection and analysis responsibilities, and planning functions, reasonable conclusions about the significance of budget or staff size cannot be drawn.

3. Open Meetings Act/State Gift Ban Act.

The Report comments on changes to the Planning Act that became effective on June 9, 2000, including a comment that the State Board is now subject to the Open Meetings Act and State Gift Ban Act. Although this language was added to the Planning Act, as a State agency, the State Board and its members have always been subject to and have complied with the provisions of the Open Meetings Act and the State Gift Ban Act.

4. Annual Reports and Cost Savings.

The Report expresses concern that "cost savings" reported by the State Board may be overstated due to instances of projects being withdrawn prior to a State Board decision, due to project revisions and re-submission at a later time, or due to circumstances warranting withdrawal that were unrelated to the CON process. The State Board acknowledges the difficulty and complexity in monitoring and explaining the causes for the withdrawal of an application. Nonetheless, the State Board believes that the submission of an application is done with the full support and knowledge of a facility's governing body and, barring some unforeseen event, represents the intention and commitment of the applicant to proceed with the project as submitted. Furthermore, while anecdotal and difficult to quantify, the State Board believes that the vast majority of applications that are withdrawn are done so based upon the belief or knowledge of an applicant that staff has identified negative findings or due to an anticipated denial of the transaction by the State Board.

The State Board concurs that there may be cases where projects are withdrawn for reasons

unrelated to the CON process. In addition the State Board acknowledges that some projects may be revised and resubmitted and approved at a later date. Such instances identified in the Report account for about 5% of the projects that submitted CON applications during the Report's study period of FY 1996 through FY 2000. Absent a detailed review of each of these projects, it is impossible to determine whether the projects would have been denied upon initial consideration by the State Board and whether improvements or changes were made as a result of staff or other consultation that resulted in re-submission of an "approvable" application. In addition, as mentioned in the Report, it is difficult to evaluate the impact of the "sentinel effect" (the existence of the program discouraging imprudent applications) including any cost reductions that may have taken place as a result of pre-application conferences or upon the advice of CON consultants to various providers. Similarly it is difficult to evaluate if facilities would spend more on projects absent a CON program that places a limit or "cap" on project expenditures. Nonetheless, the Report acknowledged and identified over \$37 million in project cost reductions and over \$32 million in denied applications.

One possible way to measure the impact of the sentinel effect may be to evaluate data from national sources concerning the number and utilization of certain facilities and services in CON states versus non-CON states. For instance, by extrapolating data from the *SMG 2000 Freestanding Outpatient Surgery Centers Report*, the following may be noted with respect to ambulatory surgical treatment centers (ASTC): the number of facilities per 100,000 population (MM) in non-certificate of need states (10.83 per MM) is considerably higher than in Illinois (7.57 per MM) or in New York (1.84 per MM). The average volume of ASTC's in non-certificate of need states (2,265 cases per center) is considerably lower than in Illinois (2,756 cases per center) or in New York (3,736 cases per center), a state with a very stringent CON program. If CON were repealed in Illinois, there would be no control over entry into the market. If Illinois were to have uncontrolled development of ASTC's and such development were to parallel the national averages, there would be a 43% increase in surgery centers with a potential corresponding decline in utilization of 17.8% at existing facilities. In addition such expansion would annually result in an estimated revenue decrease of \$46,000,000 for existing ASTC's and an estimated revenue decrease of \$73,350,000 for existing hospitals. While the State Board is mindful that there may be many factors that influence the development of facilities and services, the impact of the "sentinel effect" should not be underestimated.

More importantly, however, the State Board strongly iterates its belief that capital and associated operating costs that have not been approved or incurred benefit the health care consumer and taxpayers because these costs (including future interest expense and depreciation) are not "passed on" to individuals or third-party payers, including the publicly-funded Medicare and Medicaid programs. Furthermore, it is virtually impossible to measure the benefit of reducing a facility's operating costs as a result of not having to staff or maintain unneeded capacity that might have been otherwise constructed.

5. Program Coverage.

The Report references several areas of CON coverage and makes comments about a “level playing field,” discontinuation, and excess bed capacity. While the State Board has consistently operated within the scope of its jurisdiction, some industry representatives suggest that since certain settings or types of facilities are exempt from CON (e.g. non-facility acquisitions of major medical equipment and assisted living facilities), the State Board should either exempt the review of similar transactions for facilities under the jurisdiction of the Planning Act or extend review authority to cover all settings. The State Board disagrees that in order to “level the playing field,” it should abandon its review responsibilities. The State Board reiterates that in such cases, it has no authority to extend, nor is it recommending, expansion of its jurisdiction. Such decisions are the responsibility of the General Assembly and subject to the State’s legislative process. Absent specific legislative intervention, the State Board believes that it *has an obligation to perform its mandated responsibilities* within the context prescribed by the statute.

Another of the statutorily prescribed responsibilities is the review of proposed discontinuation projects. The discontinuation review requirement is not found in many state CON programs, and the Report purports that for some facilities the function appears to duplicate licensing requirements. The State Board would note, however, that the responsibility of licensing is to assure protection and proper placement of residents, while the State Board’s role is concerned with such issues as community awareness, preservation of assets and competition, and to evaluate the impact of closure upon access to care.

Over the years, concerns have been expressed by many legislators about the closure of facilities in inner-city areas and the potential adverse impact upon access to care. The State Board acknowledges that its authority is very limited with respect to discontinuation and that it cannot realistically require insolvent facilities to remain open. The State Board believes, therefore, that the issue of discontinuation should be addressed by the General Assembly, which can determine whether there is any benefit to be derived by community awareness and community action with respect to proposed discontinuation projects.

Another item mentioned in the Report is the high degree of excess capacity in the number of hospital and long-term care beds in many areas of Illinois. The State Board has neither closure nor de-certification authority with respect to reducing excess capacity and *does not suggest or recommend such authority*. Once again, the General Assembly is the appropriate body to determine the public policy in this arena. The planning principles and review criteria utilized by the State Board, however, have resulted in reducing excess capacity by preventing facilities from modernizing or replacing underutilized beds. The State Board believes this approach, coupled with voluntary discontinuation of unneeded beds on the part of the industry, may be a preferable way to address this concern.

Section 2 – Response to Recommendations

1. Use Conditions Properly.

While the State Board agrees that conditions required of applicants relate to projects being considered and should comply with the Planning Act, it does not concur or agree that the cited case should serve as a basis for this recommendation. The State Board notes that the Report did not find the use of conditions beyond the scope of the State Board's authority and that there was only a single case cited as an example of "conditions that do not seem closely related to the application being considered by the Board."

The "conditions" relating to this case were the result of a negotiated settlement agreement that was agreed to by the applicant, as well as, the State Board and other parties, was court approved and involved litigation between the State Board and an applicant. This particular case was unique in the history of the Illinois CON program, and because of the settlement agreement, the application was not processed or reviewed in accordance with established procedures. Furthermore, the applicant at all times had the legal right to pursue resolution of the dispute through the courts. The State Board believes the conditions were appropriate, and does not believe this unique case is indicative of the use of conditions nor similar to instances where applicants have agreed to comply with certain performance requirements as conditions for maintaining a valid permit. Nonetheless the State Board will review and analyze whether procedures or regulations should be adopted that provide a process for demonstrating that conditions comply with the Planning Act and that they relate to the type of project being reviewed. The detailed background of the cited case and the Agreed Consent Order and settlement agreement are appended to this response.

2. Improving Effectiveness.

The State Board agrees with this recommendation to analyze and to make changes to improve the effectiveness of the CON program. The State Board will develop a plan or strategy by the end of the calendar year to address methods of evaluating CON's impact upon controlling health care costs, allowing public access to necessary health services, and guaranteeing the availability of quality health care to the general public. The State Board has already established work groups representing both consumers and providers and will seek input from health care associations, other state agencies, members of the General Assembly and the Governor's Office.

3. Apply Criteria Consistently.

This recommendation pertains to the Department of Public Health. The State Board concurs with the Report's findings that "inconsistencies were by and large minor in nature" and notes that these discrepancies did not affect the State Board's assessment of need or outcomes.

4. Domino Effect.

The State Board will examine its review criteria to address the “domino effect.” Although the Report expresses a concern that Department findings “look better or worse than it [State Agency Report] really is,” the State Board does not believe that the “domino effect” has adversely affected the outcome of projects with respect to demonstrating need and justifying approval. Nonetheless, the State Board recognizes the sensitivity of the provider community to “negative” findings and believes that this concern can be addressed by the end of the year.

5. Use Deferrals Consistently.

The Report correctly noted that the State Board has recently revised its rules in order to address the issue of deferrals and has attempted to provide a procedure that is easily understood and utilized by applicants. The State Board has always attempted to be responsive by affording ample opportunities to correct deficiencies in applications. The State Board will monitor the use of deferrals as well as adherence to other procedural rules during the remainder of this year and will implement additional changes as quickly as possible if it appears that applicants are not given consistent and fair consideration.

6. Treat Applicants Consistently.

The report points out that there appear to have been occasions where applications proposing similar services may have had different outcomes. The State Board notes that, while some applications are similar, none are identical. Each case is reviewed on its own merits, within its own unique context, with consistent attention to equitable administration of the Board’s authority. Even the most similar of cases may exhibit different applicant responses to the same review criteria and may have had different degrees of support from the community through the public comment and hearing process. The State Board agrees that applicants should be treated consistently, and appreciates the Report’s suggestion that a comparative review process be initiated in order to choose the best application to meet community needs. The State Board will initiate a review of its procedures to consider whether a comparative review process should be initiated in Illinois to assure overall consistency in application reviews.

7. Statement of Board Findings.

The State Board has considered the issue of written findings in the past and will consider this matter again by the end of the year. The State Board concurs that applicants are entitled to know the basis of approval or disapproval. To assist applicants and interested parties, the State Board has utilized a court reporter to transcribe the entire proceedings of State Board meetings. Nonetheless, many applicants may desire comments or specific citations from Board members with respect to what criteria are adequately met or not met. The State Board will explore various options with respect to addressing this recommendation.

LAW OFFICES
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August 29, 2001

Pam Taylor, Chairman
Illinois Health Facilities Planning Board
535 West Jefferson Street, 2nd Floor
Springfield, IL 62761

Re: Legislative Audit Commission Report
Franciscan Sisters Health Care Corporation, et al
v. Health Facilities Planning Board, et al
97 CH 013546

Dear Chairman Taylor:

This letter is written in response to the draft findings of the Legislative Audit Commission, hereinafter "draft Report," regarding the resolution of the above-captioned litigation and the authority of the Illinois Health Facilities Planning Board ("State Board").

As you recall, Franciscan Sisters Health Care Corporation, together with the other named plaintiffs, collectively referred to as "Provena Health", determined to consolidate their respective hospital entities. The new parent corporate entity resulting from this consolidation became known as Provena Health and included eight hospitals located across Illinois.

Provena Health contended that the transaction was not subject to the certificate of need permit review process, but rather required only the filing of applications for certificates of exemption. The State Board and our office disagreed.

The difference between the two processes is that under the permit review process, the State Board is responsible for determining whether the statutory criteria enumerated in the Illinois Health Facilities Planning Act, hereinafter "the Act", and the criteria set forth in rules promulgated by the State Board, have been met. These criteria are intended to effectuate the legislative purpose of the Act to:

...establish a procedure designed to reverse the trends of increasing costs of health care..., to improve the financial ability of the public to obtain necessary health services, and to establish an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public. (emphasis added) (Section 2 of the Act, 20 ILCS 3960/2).

The exemption process requires no such review, but merely the submission of certain information and documents. If all information is submitted, then the transaction is exempt from State Board review.

This litigation was protracted, with appeals advanced to the Appellate and Supreme Courts. Since the impetus for the underlying corporate transactions was an attempt to recover Medicare depreciation funds from the federal government, Provena Health was eager to settle the litigation upon terms which would permit it to move forward with its federal claim. As stated in paragraph 2 of the Agreed Consent Order, Provena filed a consolidation application "in order to resolve the pending dispute with the (State Board)". The application was reviewed by the State Board and "found to address substantially all of the consolidation criteria." The permit's issuance was the product of the Agreed Consent Order although not specifically included in the Settlement Agreement. As part of this process, public hearings were held in the communities affected by the consolidation. The conditions discussed by the draft Report were the result of the public comments expressed during those hearings.

The State Board's interest in the litigation was to accomplish the purposes of the permit review process, whether or not a permit was issued by the State Board. Specifically, the State Board and our office sought to ensure that the consolidation of these eight hospitals, affecting the lives of millions of citizens across Illinois, would not adversely affect the cost, quality or access to health care in these communities.

The central concern of the draft Report is that the "permits" and a "settlement agreement which eventually granted the consolidations, placed" certain conditions which "may be excessive" or "do not seem closely related to the application". These conditions related, in part, to the physicians working in the Danville community and at USMC, one of the consolidated hospitals located in Danville. In addition, the draft Report refers to a Settlement Agreement which "required the applicants" to make contributions to two free clinics, one in Vermillion County and one in Joliet, over a four year period, totaling \$600,000.

The conditions noted by the draft Report were not imposed by the State Board, but rather reflected the terms and conditions offered by Provena to address concerns relating to access to health services and the quality and cost of those services to residents not only of the Danville community but to those of the Joliet area, as well. They were offered by Provena as an inducement towards

settlement of the litigation. (See Paragraph 6 of the Settlement Agreement)

These concerns, expressed during public hearings conducted pursuant to Section 8 of the Act and as part of the permit review process, centered on the operation of USMC, the ability and intention of the new parent entity to ensure that relations between the Danville hospital and area physicians would not further deteriorate thereby jeopardizing access, quality and cost of health services to community residents, and the availability of services to those whose access to care had diminished under USMC's prior administration. These areas of concern fall within the purview of the State Board's criteria for change of ownership transactions, including consolidation.

77 Ill. Administrative Code, Ch. 11, Sec. 1130.240 contains review criteria "designed to evaluate the impact on the health care system" of consolidations and other changes in ownership of health care facilities. The criteria require an impact statement detailing anticipated changes in operation and service delivery, including staffing, over a two-year period, a cost/benefit analysis, and the rationale for the transaction; documentation regarding anticipated changes which may result in the diminution of access to care, including restrictive admission policies, restrictions pertaining to the use of other area care providers; documentation evidencing anticipated improvements to access to services previously unavailable in the community because of the structure of the facility's care system; and documentation detailing the current and proposed relationship with related health organizations regarding access and service delivery issues.

It is readily apparent from a review of the State Board's consolidation criteria and the terms and conditions of the Settlement Agreement regarding the various commitments made by Provena Health, that they are neither "excessive" nor unrelated to the health care issues surrounding the consolidation of health care facilities. We believe that the terms and conditions with which the draft Report takes issue are well within the authority of the State Board, not only in this instance of settlement of pending litigation but in a typical permit application circumstance where the underlying facts are similar.

We have appended to this letter a copy of the Agreed Consent Order entered by Judge Kinnaid on June 18, 1998 and the Settlement Agreement amongst the parties incorporated therein.

Sincerely



Barbara Frazin Weiner

BFW:tlk
Enclosures

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

FRANCISCAN SISTERS HEALTH CARE)
CORPORATION, SAINT MARY'S HOSPITAL OF)
KANKAKEE, ILLINOIS, MERCY CENTER FOR)
HEALTH CARE SERVICES, COR UNUM, WARDE)
CORPORATION d/b/a McCAULEY MANOR, and)
COVENANT MEDICAL CENTER OR)
CHAMPAIGN/URBANA.)

Plaintiffs,)

v.)

97 CH 013546)

HEALTH FACILITIES PLANNING BOARD OF THE)
STATE OF ILLINOIS, PAM A. TAYLOR, MARJORIE)
E. ALBRECHT, THOMAS BECK, FRED BENJAMIN,)
ERNEST JENKINS, HARRY KURSHENBAUM,)
STUART LEVINE, LOUIS LIBERT, WILLIAM)
MARSHALL, ROBERT SCHRAYER, JOYCE)
WASHINGTON, BERNARD WEINER, RICHARD)
WRIGHT.)

Defendants.)

FOX VALLEY VENTURE LIMITED PARTNERSHIP,)

Intervenor.)

AGREED CONSENT ORDER

This matter comes before the Court on the joint motion of the plaintiffs in this suit (herein referred to collectively as "Provena"), the defendants in this suit (herein referred to as "IHFPB"), and the intervenor Fox Valley Venture Limited Partnership ("Fox Valley") (collectively, the "Parties") for entry of an agreed consent order, the Court finding the Parties in agreement and being fully advised in the premises, and the Parties requesting and representing to the Court as follows:

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RECITALS

Pursuant to their discussions in an effort to settle this matter without further litigation before this Court:

- A. Pursuant to the Illinois General Not for Profit Corporation Act, Provena Hospitals, a new corporation, was created and two (2) were renamed, Provena Health and CorUnum. Several entities sought to transfer Long Term Care facilities into CorUnum and eight (8) hospitals into Provena Hospitals and to unify governance of those facilities into Provena Hospitals.
- B. IHFPB acknowledges it received 7 COEs applications from Provena dated September 3, 1997, for the Long Term Care Facilities which were ordered issued by this Court on November 24, 1997. IHFPB acknowledges it also received 8 COEs ^{Certificates} dated September 3, 1997, for the HOSPITALS ordered issued by this Court on November 24, 1997. IHFPB and Provena acknowledge that a dispute regarding the applicability of various provisions of the Act and the Rules has ensued since November.
- C. IHFPB has acknowledged that it has received a Permit Application submitted by HOSPITALS and SENIOR SERVICES pursuant to the definition of Consolidation contained in Rule 77 Ill. Administrative Code, Ch. II, Sec. 1130.140(h) and the State Agency has determined that such application substantially addresses all criteria in Rule 77 Ill. Administrative Code, Ch. II, Sec. 1110.240 which governs consolidations. IHFPB and Provena have agreed that the appropriate permit fee is \$150,000.
- D. All parties have agreed that HOSPITALS and SENIOR SERVICES have fulfilled obligations under the Illinois Health Facilities Planning Act 20 ILCS § 3960/1 et seq. pre-requisite to consolidation permit approval.
- E. IHFPB has agreed that it will cease its efforts to overturn or reverse the mandatory injunction issued by this Court on November 24, 1997, which ordered IHFPB to issue Certificates of Exemption to SENIOR SERVICES and HOSPITAL; and that these Certificates of Exemption shall remain valid and in effect.
- F. IHFPB has acknowledged that the consolidation requested by Provena constituted a transaction of first impression. Based on information in the Consolidation Permit Application, IHFPB has found that, as to IHFPB Permits No. 96-092 and No. 96-093, all Permit Applicants continue to perform the same functions envisioned by the original IHFPB permits.

that the Applicants can perform the functions required under the Permits, and that the Applicants have committed to perform the functions required by the Permits regardless of the consolidation; accordingly, the IHFPB has acknowledged that Permits No. 96-092 and No. 96-093 were not nullified by the Provena Permit to Consolidate. Based on the information and assurances provided in the Consolidation Permit Application, the IHFPB has found that Rule 77 IL Admin. Code 1130.750 has been complied with. Given this finding, the Parties have agreed jointly to request the dissolution of the stay entered January 12, 1998 in Cases No. 97 CH 4454 and 97 CH 4455.

- G. The IHFPB conducted public hearings in several communities affected by the Provena Consolidation. Public hearing testimony in Danville, notably a one hospital town, differed from that in other communities. Significant testimony in Danville identified community issues with the operation of USMC, a hospital proposed to be consolidated into HOSPITALS. Therefore Provena has established a special goal of causing permanent improvements in USMC relations with staff and community as outlined in Exhibit A to the Provena Permit Application, appended herein, for the purpose of broadening access, containing cost, and enhancing the quality of care.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. The seven (7) Change of Ownership Exemptions relating to ownership of the longterm care facilities issued November 26, 1997 pursuant to this Court's Order did implement the first Consolidation Permit under Rule 77 Ill. Administrative Code, Ch. II, Sec. 1180.140(h) and are in compliance with the Act.

2. The eight (8) COEs from HOSPITALS related to the change of ownership of the hospitals pursuant to filings dated September 8, 1997, with the IHFPB have been finalized on November 26, 1997, and the CON application filed subsequently by HOSPITALS for the Hospitals in order to resolve the pending dispute with the IHFPB, including the special filing fee of \$150,000 payable to the IHFPB have been reviewed and found to address substantially all the consolidation criteria by the IHFPB. Therefore the consolidation permit is ordered issued retroactive to November 26, 1997, and has been finalized in full compliance with the Act.

3. Pursuant to the parties understandings, the Consolidation Permit ordered to be issued and recognized as dating back to November 26, 1997 shall have a fee of \$150,000.

4. Nothing in this Order, the Provena Consolidation, or previous orders in this action, including the issuance of the Provena Consolidation Permit, shall be construed as having any negative effect on the validity of Fox Valley Permits Nos. 96-092 and 98-093.

5. The Settlement Agreement of the parties including Provena Exhibit A to the Provena Permit Application which is Exhibit B of the Settlement Agreement is adopted and made a part of this Order.

6. By the stipulation of the Parties, this Agreed Consent Order is final and non-appealable.

7. The Court shall retain jurisdiction to enforce the terms of this Agreed Consent Order.

<p>ENTERED CLERK OF THE CIRCUIT COURT AURELIA PUCINSKI</p>
<p>Judge JUN 18 1998</p>
<p>JUDGE DOROTHY KINNAIRD #376</p>

Agreed to, in form and substance: See attached signature page.
[signatures of counsel for parties]

PROVENA HOSPITALS,
PROVENA SENIOR SERVICES



GARDNER, CARTON & DOUGLAS
321 North Clark Street
Suite 3400
Chicago, Illinois 60610-4795
(312) 644-3000

Attorneys for Plaintiffs

HEALTH FACILITIES PLANNING
BOARD OF THE STATE OF ILLINOIS,
et al.



BRUNO & WEINER
233 E. Wacker Drive
Suite 4206
Chicago, Illinois 60601
(312) 819-1583

Attorneys for Defendants

FOX VALLEY VENTURE
LIMITED PARTNERSHIP



CASILL, CHRISTIAN & KENKLE, LTD.
224 South Michigan Avenue
Suite 1300
Chicago, Illinois 60604-2507
(312) 341-1688

Attorneys for Intervenor

SETTLEMENT AGREEMENT

THIS AGREEMENT is made this 21st day of May, 1998, among **PROVENA HEALTH**, an Illinois not-for-profit corporation ("PROVENA HEALTH"), **PROVENA HOSPITALS**, an Illinois not-for-profit corporation ("HOSPITALS"), **PROVENA SENIOR SERVICES**, an Illinois not-for-profit corporation ("SENIOR SERVICES"), **ILLINOIS HEALTH FACILITIES PLANNING BOARD**, a body politic and subdivision of the State of Illinois ("BOARD"), and **FOX VALLEY VENTURE LIMITED PARTNERSHIP**, an Illinois limited partnership ("FOX VALLEY," or "INTERVENOR").

RECITALS:

- (a) **PROVENA HEALTH** is an Illinois not-for-profit corporation, federally tax-exempt, formerly known as Mercy Health Corporation and renamed on November 26, 1997, effective November 30, 1997, as the parent organization in a threeway co-sponsored Roman Catholic health system located in various counties of Illinois and Indiana.
- (b) **HOSPITALS** is an Illinois not-for-profit corporation, federally tax-exempt, created on November 26, 1997, to serve, effective November 30, 1997, as the successor to Franciscan Sisters Health Care Corporation ("FSHCC" - Frankfort, Illinois), ServantCor ("ServantCor" - Kankakee, Illinois), Covenant Medical Center of Champaign/Urbana ("Covenant"-Urbana, Illinois), St. Mary's Hospital of Kankakee, Illinois ("St. Mary's" - Kankakee, Illinois), and Mercy Center for Health Care Services ("Mercy Center" - Aurora, Illinois). FSHCC consisted prior to November 26, 1997, of St. Joseph Hospital (Elgin, Illinois), St. Joseph Medical Center (Joliet, Illinois), Saint Therese Medical Center (Waukegan, Illinois), and United Samaritans Medical Center (two (2) licensed hospitals in Danville, Illinois). The transactions of November 26, 1997, creating **HOSPITALS** consisted of a statutory consolidation (the "Consolidation") under the Illinois General Not-For-Profit Corporation Act §111.05, of FSHCC, ServantCor Covenant St. Mary's and Mercy Center: **HOSPITALS**, which did not previously exist. The eight (8) Illinois-licensed hospitals which, effective November 30, 1997, were owned and operated by **HOSPITALS** as divisions and have continued their operations are collectively referred to herein as "the Hospitals."
- (c) **SENIOR SERVICES** is an Illinois not-for-profit corporation, federally tax-exempt, previously known as Cor Unum and renamed on November 26, 1997, effective November 30, 1997, on which date it obtained by statutory merger and by the transfer of assets two (2) Illinois-licensed long-term care facilities to supplement the five (5) Illinois-licensed long-term care facilities it already owned and operated. All such long-term care facilities are collectively referred to herein as "the Long-term Care Facilities."
- (d) The **BOARD** is a body politic and subdivision of the State of Illinois serving under the Illinois Health Facilities Planning Act (the "Act") as the designated state health planning agency to prevent unnecessary health care costs and to

regulate by a finding of a certification of need ("CON") the establishment, construction and modification of health care facilities, health capital expenditures, new institutional health services, and certain medical equipment. The fourteen (14) current members of the BOARD (the "IHFPB Board Members") are the persons charged by the Act with its implementation (there is currently a vacancy on the BOARD).

(e) HOSPITALS and SENIOR SERVICES are successors to the interests of the Plaintiffs in Case No. 97 CH 013546 in the Circuit Court of Cook County, Illinois, County Department, Chancery Division. The Honorable Dorothy Kirie Kinnaird, Judge Presiding, in which the BOARD and the IHFPB Board Members are the Defendants and FOX VALLEY is INTERVENOR (the "Litigation"). HOSPITALS was created on November 26, 1997, upon the entry of a mandatory Injunction in said case on November 24, 1997, by Judge John K. Madden, ordering the BOARD and the IHFPB Board Members to issue to Plaintiffs certificates of exemption ("COEs") from the CON permit process.

(f) INTERVENOR was granted leave to intervene in the Litigation and the subsequent appeals by Defendants in order to prevent the nullification under the BOARD's rules of CON Permit Nos. 96-092 and 96-093.

(g) HOSPITALS and SENIOR SERVICES, in order to resolve their disputes with the BOARD, have filed a CON application with the BOARD for the Consolidation which the BOARD has reviewed and found to address substantially all the criteria in Rule 77 Ill. Admin. Code Chapter II, Section 1110.240 which governs Consolidations. The BOARD acknowledges that by this Settlement Agreement the Consolidation will be recognized as retroactive to November 30, 1997. The BOARD and HOSPITALS and SENIOR SERVICES have agreed that the appropriate permit fee is \$150,000.

(h) The parties hereto desire to resolve all of their above-described disputes and believe that the settlements herein are in their best interests and the best interests of those subject to the Act, including the citizens of the State of Illinois.

NOW, THEREFORE, the parties agree, subject only to the approval of the BOARD and the entry of the Consent Order Decree (attached hereto as Exhibit A), as follows:

1. IHFPB acknowledges it received seven (7) COE applications from SENIOR SERVICES dated September 3, 1997, for the Long Term Care Facilities which were ordered issued by this Court on November 26, 1997. IHFPB acknowledges it also received eight (8) COE applications dated September 3, 1997, for the Hospitals. These COE's were ordered issued by this Court on November 24, 1997. IHFPB and Provena acknowledge that a dispute regarding the applicability of various provisions of the Act and the Rules has ensued since November.

2. IHFPB has acknowledged that it has received a Permit Application submitted by HOSPITALS and SENIOR SERVICES pursuant to the definition of

Consolidation contained in Rule 77 Ill. Administrative Code, Ch. II, Sec. 1130.140(h) and the State Agency has determined that such application substantially addresses all criteria in Rule 77 Ill. Administrative Code, Ch. II, Sec. 1110.240 which governs consolidations. IHFPB, HOSPITALS and SENIOR SERVICES have agreed that the appropriate permit fee is \$150,000.

3. All parties have agreed that HOSPITALS and SENIOR SERVICES have fulfilled its obligations under the Health Planning Act pre-requisite to consolidation permit approval.

4. IHFPB has agreed that it will cease its efforts to overturn or reverse the mandatory injunction issued by this Court on November 24, 1997, which ordered IHFPB to issue Certificates of Exemption to SENIOR SERVICES and HOSPITALS; and that these Certificates of Exemption shall remain valid and in effect.

5. IHFPB has acknowledged that the consolidation requested by Provena constituted a transaction of first impression. Based on information in the Permit Application, IHFPB has found that, as to IHFPB Permits No. 96-092 and No. 96-093, all Permit Applicants continue to perform the same functions envisioned by the original IHFPB permits, that the Applicants can perform the functions required under the Permits, and that the Applicants have committed to perform the functions required by the Permits regardless of the consolidation; accordingly, the IHFPB has acknowledged that Permits No. 96-092 and No. 96-093 are valid notwithstanding the Court-ordered change of ownership exemptions, this Settlement Agreement, and the Court-ordered Consolidation Permit. Based on the information and assurances provided in the Consolidation Permit Application, the IHFPB has found that Rule 77 IL Admin. Code 1130.750 has been complied with. Given this finding, the Parties have agreed jointly to request the dissolution of the stay entered January 12, 1998, in Cases No. 97 CH 4454 and 97 CH 4455.

6. The IHFPB conducted public hearings in several communities affected by the Provena Consolidation. Public hearing testimony in Danville, notably a one hospital town, differed from that in other communities. Significant testimony in Danville identified community issues with the operation of USMC, a hospital proposed to be consolidated into HOSPITALS. Therefore, Provena has established a special goal of causing permanent improvements in USMC relations with staff and community as outlined in Exhibit A to the Provena Permit Application, appended herein by this reference and made a part hereof as Exhibit B, for the purpose of broadening access, containing cost, and enhancing the quality of care.

7. In consideration for and of the execution of this Settlement Agreement and other valuable consideration, the receipt and sufficiency of which is acknowledged by the parties to this Settlement Agreement, each of the parties hereby releases, acquits and forever discharges the other parties' respective officers, directors, general and limited partners, trustees, employees, agents, lawyers, consultants, subsidiaries, affiliates, wholly owned divisions, successors and assigns of and from any and all actions, causes of action, claims, demands, damages, costs, expenses and

compensation, which it now has or may hereafter have, on account of or arising out of the Litigation.

8. This agreement shall have a set term of seven (7) years and, in any event, shall survive the entry of the Consent Decree contemplated herein to resolve Case No. 97 CH 013546 for so long as it requires to satisfy the specific obligations and covenants of the parties, the parties acknowledging that the Court therein shall retain jurisdiction to enforce the terms of the Consent Decree.

9. This agreement is expressly contingent upon and subject to (a) the adoption by the BOARD of a resolution approving this settlement, and (b) the entry of a Consent Decree in Case No. 97 CH 013546 approving the applicable provisions hereof, and dismissing such litigation and all pending appeals, and ordering the issuance of a consolidation permit.

10. Each of the parties hereto represent and warrants to the other parties hereto that they have the authority to enter into this Agreement.

11. All benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

12. This Agreement is to be governed by the laws of the State of Illinois.

13. This Agreement may be executed in any number of counterparts, and all such counterparts shall for all purposes constitute one Agreement, binding upon the parties, notwithstanding that not all parties are signatories to the same counterpart.

14. The above recitals are expressly incorporated herein and made a part of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date first written above.

PROVENA HEALTH

By _____
Its _____

PROVENA HOSPITALS

By _____
Its _____

**ILLINOIS HEALTH FACILITIES
PLANNING BOARD**

By _____
Its _____

PROVENA SENIOR SERVICES

By _____
Its _____

**FOX VALLEY VENTURE LIMITED
PARTNERSHIP**

By William C. Graft
William C. Graft
Its: Managing Member and Authorized Agent

PROVENA**EXHIBIT A**

This Provena Exhibit A attaches to and is made a part of the Permit Application and is Exhibit B of the Settlement Agreement.

1. In the administration of USMC a cooperative team approach to health care delivery will be employed. Professional courtesy towards all Medical/Dental staff, allied health professionals, and employees is critical to quality care and shall be the practice. Inclusion of physicians on USMC Board is recognized as a desirable method for accomplishing this team approach, and Provena will cause 2 physicians annually to be selected from the USMC Medical/Dental staff from 6 nominated by the Medical/Dental staff to serve on the USMC board. Only actively full time practicing physicians who have no contractual or employment relationship with USMC or Provena shall be eligible for USMC board service in this capacity. New board members shall sign and be bound by conflict of interest statements, although such statements shall not preclude physicians from participating in non-Provena managed care products and entities.
2. To further such an atmosphere it is an early goal to accomplish staff by-laws developed by the Medical/Dental Staff and approved by the USMC Board pursuant to state laws and accrediting bodies as a binding contract. Provena will work with the President of the Medical/Dental Staff to accomplish this objective.
3. Equitable relations with all Danville physicians will be fostered. This includes equitable pricing and the opportunity for participation in Provena managed care entities. It is recognized that currently the Christie Clinic has veto authority over physician participation in Personal Care, a partially Provena controlled entity. Provena will seek to have any Vermillion County physician included in Personal Care. Should Christie cease to have veto authority or Personal Care's corporate structure changes, Provena will make Personal Care available for any Vermillion County physician. Membership in Provena managed care products shall not automatically preclude physicians from participating in non Provena managed care products and entities.
4. Provena desires to support the availability of medical care for all and will contribute to two free clinics which provide for care for the working poor in the two more industrial cities it is located in. To that end, beginning 90 days after the entry of the Consent Decree Provena will contribute \$100,000 per year for 4 years to the Vermillion Area Community Health Care Center - Free Clinic and \$50,000 for 4 years to St. Joseph's Free Clinic in Joliet.
5. Provena will seek to work with all area physicians, whether independent or not as well as allied health professionals to improve access and quality as well as cooperation in the Vermillion County Health Care System.

6. Provena affirms its commitment to maintaining a full-service hospital with appropriate expansions of service as approved by IHFPB.
7. Provena recognizes its special responsibility to operate USMC in a constructive fashion because Danville is a one-hospital town. It is Provena's intention to try to utilize efficiency improvements in the operation of USMC to pay for quality enhancements while minimizing charge increases. It is the intent of Provena to operate USMC in an efficient, effective, and quality manner with a charge structure consistent with these objectives.
8. USMC will work with its Medical/Dental staff to develop promptly (90 days) after the entry of the Consent Decree approving settlement of the parties' litigation a Medical/Dental Staff Development Plan as to community needs for additional physicians, taking into consideration the ages of existing physicians, the announced objective of USMC to submit only board-eligible and board-certified physicians, and those areas within USMC service area which are classified by the applicable federal agencies as medically underserved. Such a plan shall be submitted at least annually to the USMC governing body for approval. Except where accomplished pursuant to such plan, USMC will not contract exclusively with physicians other than in the areas historically so contracted by the hospital (radiology, anesthesiology, pathology, oncology and emergency services) but this provision shall not prohibit USMC from temporarily subsidizing physicians in non-hospital based specialties which it may recruit to broaden the pool of medical talent available in the Danville area. Such physicians must repay any such subsidy within a commercially reasonable period.

As a show of good faith USMC will unilaterally put a moratorium on offers to physicians for the 90 day period mentioned above. (Two exceptions to this are: One - OB/GYN; One - Family Practitioner).

9. The term of Exhibit A shall be 7 years.

**Illinois Department of
Public
Health**

George H. Ryan, Governor • John R. Lumpkin, MD, MPH, Director

525-535 West Jefferson Street • Springfield, Illinois 62761-0001

September 7, 2001

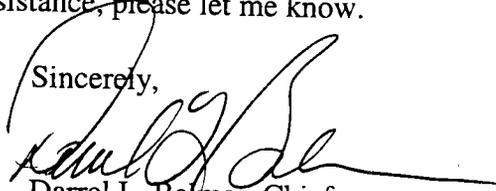
Ed Whittrock
Audit Manger
Office of the Auditor General
740 East Ash Street
Springfield, IL 62703-3154

Dear Mr. Whittrock:

Included with this correspondence is the Illinois Department of Public Health's Response to Recommendations 2 and 3 of the Audit of the Health Facilities Planning Board.

If I can be of any further assistance, please let me know.

Sincerely,



Darrel L. Balmer, Chief
Division of Internal Audits

Attachment

Department of Public Health Response
to Office of the Auditor General
Audit of the Health Facilities Planning Board

The Illinois Department of Public Health (IDPH) appreciates the opportunity to comment upon the Audit of the Health Facilities Planning Board (State Board). The Auditor General's report addressed issues pertaining to the performance of the State Board and contained seven recommendations. While two of the recommendations (Recommendations 2 and 3) referenced Public Health staff, only Recommendation 3 pertains to the Department's statutory responsibility of reviewing certificate of need applications. The Department, which is responsible for providing administrative and staff support to the Planning Board, will comment on Recommendations 2 and 3 and has no comments concerning the audit report's other recommendations that pertain solely to the State Board.

Recommendation 2: The Planning Board and Public Health staff should take every effort to analyze their effectiveness and to make changes to improve effectiveness. This may include working with consumers, health care payors, health research groups, health care providers, health care associations, and members of the General Assembly to be certain that the Illinois health planning process serves the needs of the people of Illinois.

IDPH Response: The Department is committed to assisting the State Board through the provision of administrative and staff resources in efforts to achieve this recommendation. As always, the Department staff is prepared to assist and work with the State Board, consumers, providers, and legislators in efforts to analyze the effectiveness of and to recommend changes to the certificate of need program. The Department notes, however, that the authority to make changes to any standards, criteria, and administrative procedures are under the jurisdiction of the State Board.

Recommendation 3 State agency staff at the Department of Public Health should assure that evaluation criteria are applied consistently in the projects that they review and the State Agency Report that they prepare.

IDPH Response: The Department concurs with the Auditor General's finding that any inconsistencies in the State Agency Reports were "by and large minor in nature." The audit team reviewed the Department's State Agency Reports (SAR) on 130 certificate of need applications containing findings on approximately 2,000 review criteria and identified 21 instances where the findings appeared inconsistent among similar applications. The Department

notes the following with respect to these 21 cases:

- The vast majority (17 of the 21 findings) of these cases involved the staff analyzing and submitting findings on information provided by the applicant for review criteria that should have been reported as “not applicable.”
- In two of the remaining four cases that were cited, the Department believes that staff utilized appropriate judgement in evaluating unique circumstances pertaining to the applications being reviewed and in arriving at the findings contained in the SAR. The audit team has been advised of our rationale concerning these two instances.
- Nearly all of the identified instances appeared to concern review criteria that were tangential to an application’s primary focus of justifying the need for a project (i.e. compliance or noncompliance with these criteria would not have a substantial impact upon an applicant’s overall justification of the need for a project).
- The State Board noted in its comments concerning this recommendation that the 21 cited instances did not affect the outcome pertaining to the issuance of a certificate of need.

While the Department is functioning with a 99.9 per cent accuracy for the State Agency Reports, the Department nonetheless believes improvement can be made. The Department will strive to assure that there are no inconsistencies in the SAR findings. To accomplish this objective, additional checks and balances have been implemented including greater supervisory oversight in the initial development of draft reports and an additional administrative review to assure both continued quality in the substance of the reports as well as technical consistency in the application of the review criteria.

AUDITOR COMMENTS:

- 1** This information was provided for background purposes and notes the sources of the data and discloses that information was not available for all states.
- 2** Although the conditions were part of a negotiated settlement agreement, it is not clear how some of the conditions were related to the consolidation of health care corporations.
- 3** During the course of the audit, we provided the Department with examples of instances where State Agency findings were inconsistent. There were additional instances of inconsistencies among similar applications that we identified. While our testing showed that over 10 percent of the projects had at least one inconsistency, all inconsistencies were by and large minor in nature.