



STATE OF ILLINOIS
OFFICE OF THE
AUDITOR GENERAL

Frank J. Mautino, Auditor General

REPORT DIGEST

**PERFORMANCE
AUDIT**

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accordance with
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EXECUTIVE SUMMARY

**Health Facilities and Services Review Board and the
Certificate of Need Processes**

The Illinois Health Facilities Planning Act at 20 ILCS 3960/19.5 (enacted by Public Act 96-031 and amended by Public Act 99-527) required the Office of the Auditor General to conduct a performance audit of the Health Facilities and Services Review Board (HFSRB or Board) and the Certificate of Need processes. Specifically, the audit was to determine:

- Whether changes to the Certificate of Need (CON) processes are being implemented effectively, as well as their impact, if any, on access to safety net services (i.e., services in low-income or rural areas); and
- Whether fines and settlements are fair, consistent, and in proportion to the degree of violations.

A performance audit was also conducted of the HFSRB as required by the Illinois Health Facilities Planning Act (Planning Act) and released in May 2014. The May 2014 performance audit contained seven recommendations and included, in addition to the above, an assessment of the Center for Comprehensive Health Planning (Center). However, in July 2016, Public Act 99-527 was signed into law which, effective January 1, 2017, repealed the requirement for the Illinois Department of Public Health to establish the Center; therefore, the two related recommendations from the May 2014 audit are not repeated. Two additional recommendations are not repeated and three are repeated as recommendations in this report.

The audit found:

- Board members were not reviewed annually by the Board Chairman as required by the Planning Act. Additionally, attendance records for Board members were not reported to the General Assembly as required by the Planning Act.
- In 9 of 39 projects, Board members did not provide rationale when voting on an item at a State Board meeting as required by a change to the Planning Act.
- All 30 projects in our sample which required a Safety Net Impact Statement submitted one; however, 5 of the 30 statements did not contain all the required elements. Also, 4 of the legal notices published by the HFSRB did not include the required statement about the filing of a Safety Net Impact Statement.
- Ten fines and settlement agreements had starting fines which were not calculated correctly, likely due to not accounting for a 30-day period, or fraction thereof, as required by the Planning Act.

Generally, we found that changes made to the Planning Act and CON process since July 1, 2013, have been implemented effectively and the only changes that appear to potentially impact access to safety net services are limited to projects applying for exemptions as opposed to CON permits. While we found it difficult to make comparisons among projects due to the many factors influencing the size of the fine or settlement, we concluded that, with the exception of limited inconsistencies and given their respective circumstances, most settlements did not appear unreasonable.

AUDIT SUMMARY AND RESULTS

The Illinois Health Facilities Planning Act at 20 ILCS 3960/19.5 (enacted by Public Act 96-031 and amended by Public Act 99-527) required the Office of the Auditor General to conduct a performance audit of the Health Facilities and Services Review Board (HFSRB or Board) and the Certificate of Need processes. Specifically, the audit was to determine:

- Whether changes to the Certificate of Need (CON) processes are being implemented effectively, as well as their impact, if any, on access to safety net services (i.e., services in low-income or rural areas); and
- Whether fines and settlements are fair, consistent, and in proportion to the degree of violations.

A performance audit was also conducted of the HFSRB as required by the Illinois Health Facilities Planning Act (Planning Act) and released in May 2014. The May 2014 performance audit contained seven recommendations and included, in addition to the above, an assessment of the Center for Comprehensive Health Planning (Center). However, on July 8, 2016, Public Act 99-527 was signed into law which, effective January 1, 2017, repealed the requirement for the Illinois Department of Public Health to establish the Center; therefore, the two related recommendations from the May 2014 audit are not repeated. Two additional recommendations are not repeated and the remaining three are discussed and included as recommendations in this report. (page 1)

Certificate of Need (CON) Process

We were asked to determine whether changes to the CON process are being implemented effectively, as well as their impact, if any, on access to safety net services. The most substantive changes were in the following areas: general clarifications, change of ownership exemptions, discontinuations, administrative rules, post decision/permit, and fines. Generally, we found that changes made to the Planning Act and CON process since July 1, 2013, have been implemented effectively. The only changes that appear to potentially impact access to safety net services are limited to projects applying for exemptions as opposed to CON permits. (pages 20-23, 27-28)

We sampled 40 of 195 CON permit applications and 25 of 115 exemption applications received by HFSRB during FY14-16. CON permit and exemption testing showed some areas of noncompliance with the Planning Act or the HFSRB’s administrative rules:

- Board members did not always provide rationale when voting on an item at a State Board meeting as required by an August 2014 change to the Planning Act. Of the 39 projects subject to the Public Act 98-1086 changes, 9 of the projects, when voted upon by the Board members, were missing voting rationale for one or more members. We made a recommendation in this area.
- HFSRB staff received written responses to State Board Staff Reports and written comments regarding project applications after deadlines established by Board rules. We found 11 projects which received

Generally, we found that changes made to the Planning Act and CON process since July 1, 2013, have been implemented effectively.

CON permit and exemption testing showed areas of noncompliance with the Planning Act or the Board’s administrative rules such as Board members not always providing rationale when voting on a project.

public comments after the Board’s 20-day deadline and 6 projects which received written responses to the State Board Staff Report after the Board’s 10-day deadline. While these communications were posted on the Board’s website, they were received outside of the public comment process and therefore, according to Board rules, these communications should be considered ex parte communications. The Board’s administrative rules state that ex parte communications should be filed in a separately identified section for the subject project and reported to the General Assembly. The responses/comments in question were not identified on the website as ex parte communications and were not reported to the General Assembly. We made a recommendation in this area. (pages 23-25)

- Safety Net Impact Statement testing showed areas of noncompliance with the Planning Act. All 30 projects in our sample which required a Safety Net Impact Statement submitted one; however, 5 of the 30 statements did not contain all the required elements. Also, 4 of the legal notices published by the HFSRB did not include the required statement about the filing of a Safety Net Impact Statement. We made a recommendation in this area. This was also a recommendation in the May 2014 performance audit. (pages 28-29)

We found that, with the exception of limited inconsistencies, given their respective circumstances, most settlements did not appear unreasonable.

Fines and Settlements

The second determination asked us to determine whether fines and settlements are fair, consistent, and in proportion to the degree of violations. While we found it difficult to make comparisons among projects due to the many factors influencing the size of the fine or settlement, we concluded that, with the exception of limited inconsistencies and given their respective circumstances, most settlements did not appear unreasonable.

We tested 24 of 36 settlement agreements and 5 of 11 fines and found the following:

- Twelve (8 of 24 settlement agreements and 4 of 5 fines) had starting fines which were not calculated correctly. Ten of these 12 were likely due to not accounting for a 30-day period, or fraction thereof, as required by the Planning Act.
- For settlement agreements, we found one instance in which there was only one fine assessed despite multiple violations within the same violation category.
- Prior to a July 23, 2015 change to the Planning Act, HFSRB staff were not consistent in the end date used in calculating a fine’s accrual; however, after July 23, 2015, the HFSRB was in compliance with this requirement.

We made a recommendation in this area. (pages 31-37)

HFSRB staff made significant improvements, compared to the performance audit released in 2014, in improving the timeliness of identifying violations and moving through the compliance process. The 2014 audit recommended that HFSRB staff should identify violations and initiate and complete the fines process in a timely manner and testing of 24 settlements showed

Ten starting fines were not calculated correctly, likely due to not accounting for a 30-day period, or fraction thereof, as required by the Planning Act.

improvements in the current process. Based on these improvements, the recommendation from the May 2014 audit will not be repeated. (pages 37-38)

Duties and Requirements of the Board and its Staff

The Board has been tasked with various duties and requirements by the Planning Act. Some of these requirements were completed and some are required on an ongoing basis. One of the ongoing requirements is to publish various reports on its website; however, the Board staff did not post all reports on its website as required. We made a recommendation in this area. This was also a recommendation in the May 2014 performance audit. (pages 9-12)

Board members were not being reviewed annually by the Board Chairman as required by the Planning Act. Additionally, attendance records for Board members were not reported to the General Assembly as required by the Planning Act. We made a recommendation in this area. This was also a recommendation in the May 2014 performance audit. (pages 12-13)

RECOMMENDATIONS

The audit report contains six recommendations. The Health Facilities and Services Review Board agreed with all six of its recommendations. Appendix E to the audit report contains the agency responses.

This performance audit was conducted by staff of the Office of the Auditor General.

SIGNED ORIGINAL ON FILE _____

AMEEN DADA
Division Director

This report is transmitted in accordance with Section 3-14 of the Illinois State Auditing Act.

SIGNED ORIGINAL ON FILE _____

FRANK J. MAUTINO
Auditor General

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