

**State of Washington  
Joint Legislative Audit and Review Committee (JLARC)**



**Performance Audit of the  
Certificate of Need Program**

**Report 06-6**

**June 26, 2006**

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JLARC staff, under the direction of the Committee and the Legislative Auditor, conduct performance audits, program evaluations, sunset reviews, and other policy and fiscal studies. These studies assess the efficiency and effectiveness of agency operations, impacts and outcomes of state programs, and levels of compliance with legislative direction and intent. The Committee makes recommendations to improve state government performance and to correct problems it identifies. The Committee also follows up on these recommendations to determine how they have been implemented. JLARC has, in recent years, received national recognition for a number of its major studies.

**PERFORMANCE AUDIT OF  
THE CERTIFICATE OF NEED  
PROGRAM**

**REPORT 06-6**

**REPORT DIGEST**

**JUNE 26, 2006**



STATE OF WASHINGTON

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## Background

In 1971, the Legislature created the Certificate of Need program in response to growing medical costs. Legislators were concerned about how the number and location of health care facilities and services affects health care costs.

The program reviews proposals for certain health care facilities and services before they can begin operation. Proposed projects are reviewed to ensure that they meet a community need, will provide quality services, and are financially feasible and will foster containment of health care costs.

From 2000 through 2005, Department of Health staff reviewed 156 applications. Of the 120 decisions reached and finalized by the end of 2005, **88 percent** were approved. Of these decisions, **30 percent** were appealed. Only two of those decisions have been overturned by a judge.

Engrossed Second Substitute House Bill 1688 (2005) directed the Joint Legislative Audit and Review Committee (JLARC) to conduct a performance audit of the Department of Health's (DOH) administration of the Certificate of Need program. The same bill created a task force to study and prepare recommendations on improving and updating the state's Certificate of Need program. The task force is to consider the results of JLARC's audit in developing its recommendations.

## Study Objectives

For this study, JLARC reviewed:

- The process for reviewing applications;
- The consistency of decisions with statute and with each other;
- How the agency monitors approved projects; and
- How the agency measures the performance of the program.

## Process and Timeliness

There are several steps in reviewing all Certificate of Need applications. Statute and rule define the amount of time that each major step should take. However, we found that the program is not consistently meeting deadlines established in statute and rule. The Department is not reaching decisions within statutory timeframes on 64 percent of applications.

## Consistency of Decisions

**Are decisions consistent with statute?** Statute lists the criteria that the Department of Health must use in making decisions. Certificate of Need program staff are fully applying several of these criteria, but there are also several criteria that program staff are only partially applying.

**Are program staff consistent in the types of analysis they are doing?** Program staff did not consistently cite the same data sources in their analyses of applications for similar facilities or services. However, some of those differences were due to the differences among the specifics of proposed projects. Additionally, more information is available from state agencies for facilities that are licensed by the state than facilities that are not.

**Are final decisions consistent with each other?** Since Certificate of Need program staff maintain limited historical electronic data on their analysis and final decision on applications and the specifics of proposed projects vary, it is very difficult to reach any conclusions about the consistency of those analyses and final decisions over time. In our review of individual applications, we did not see signs of inconsistencies in the final decisions on applications.

## Monitoring Approved Projects

Statute requires the Department of Health to monitor approved projects to ensure conformance with issued Certificates of Need, but program staff only monitor projects that are uncompleted, even if the Certificate of Need has not expired. A common condition on many Certificates of Need is for the facility to provide charity care, but since program staff do not monitor completed projects, they are unable to ensure that providers meet this requirement.

## Measuring Program Performance

The Department of Health's one performance measure for the Certificate of Need program is the timeliness of decisions, but this is not reported to the public. Program staff produce a monthly status report on current applications that they mail to subscribers for a fee, but do not make that report available on the program's webpage. This makes it difficult for the public to easily access information on the program.

## Recommendations

1. The Department of Health should identify strategies for meeting established statutory timelines for Certificate of Need applications.
2. DOH should identify strategies to ensure that all statutory criteria for reviewing Certificate of Need applications are fully applied. The Department may also recommend amendments to statutory criteria, if necessary, to reflect the state's current health care system.
3. The Legislature should consider establishing consistent basic reporting requirements for all services and facilities that are subject to Certificate of Need review so that information related to each type of application will be readily available and reliable.
4. To ensure ongoing consistency in both the analysis and final decisions for Certificate of Need applications, DOH should perform regular and ongoing reviews of program staff's application reviews and issued decisions.
5. DOH should revise its monitoring practices to include completed projects, as appropriate, to ensure applicants' compliance with issued Certificates of Need in accordance with statute.
6. DOH should better use the Certificate of Need program's website to make more information on program activities and application forms available to the public.

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# CHAPTER ONE: BACKGROUND

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## HISTORY OF CERTIFICATE OF NEED

Across the country, state Certificate of Need programs review proposals for certain health care facilities and services before they can begin operation. In Washington, the Department of Health (DOH) administers the Certificate of Need program. DOH reviews proposed projects to ensure that they meet a community need, will provide quality services, and are financially feasible and will foster containment of health care costs.

Washington's Certificate of Need program was established in 1971 in response to concerns about how the number and location of health care facilities and services was contributing to growing health care costs. In 1974, federal funding was available for state and local health planning activities, and certain federal health care funds were only available to states with Certificate of Need programs. In 1986, however, those federal incentives and requirements were eliminated.

Currently, a total of 36 states and the District of Columbia maintain Certificate of Need programs in the absence of a federal requirement or incentives. These programs vary significantly from one to another. Like many state Certificate of Need programs, Washington's program has gone through numerous changes in the past 35 years. Notably, the Certificate of Need program is the only remaining element of the broader state health planning effort within which it was initially established.

Washington's Certificate of Need program is solely supported by the fees charged for reviews. The number and type of proposed projects varies from year to year. From 2000 through 2005, the Department approved 88 percent of applications submitted for review. Once issued, a Certificate of Need is valid for two years with a possible extension of an additional six months.

## WHAT IS SUBJECT TO REVIEW?

Under current statute, a Certificate of Need is required for any of the following:

- Establishment of certain new health care facilities;
- Capacity increases for hospitals, hospice care centers, nursing homes, and kidney dialysis centers;
- Sale, purchase, or lease of hospitals;
- Construction, renovation, or alteration of a nursing home that substantially changes the services of the facility or exceeds an expenditure minimum; and
- Provision of new specialized health services, commonly referred to as tertiary services, such as open heart surgery or organ transplants.<sup>1</sup>

For the purposes of this study, we divided Certificate of Need applications into categories by the type of facility or service proposed. The following pie chart shows the number and percentage of each type of application reviewed for calendar years 2000 through 2005.

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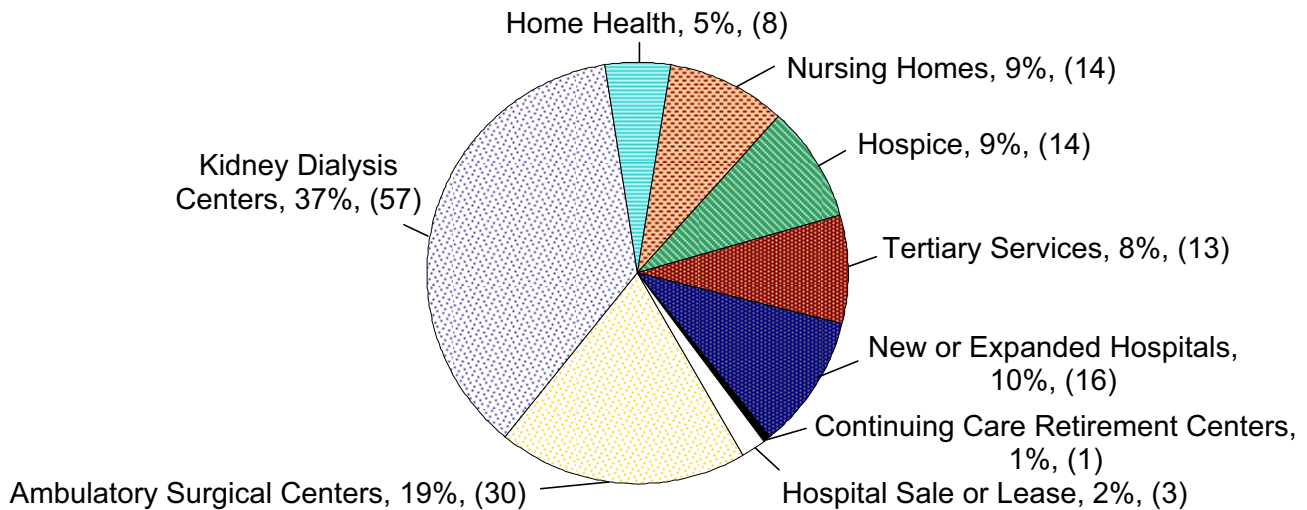
<sup>1</sup> RCW 70.38.105.

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Exhibit 1: Applications by Project Type



Source: JLARC analysis of Certificate of Need decisions for 2000 through 2005.

From 2000 through 2005, DOH staff reviewed 156 applications. Of the 120 decisions reached and finalized by the end of 2005, the Department approved 88 percent of applications. Applicants or affected parties then appealed 30 percent of the Department's decisions. Only two of those decisions have been overturned by a judge. However, an additional 33 decisions are still under appeal.

### STUDY MANDATE

Engrossed Second Substitute House Bill 1688 (2005) directed the Joint Legislative Audit and Review Committee (JLARC) to conduct a performance audit of DOH's administration and implementation of the Certificate of Need program. The same bill created a task force to study and prepare recommendations on improving and updating the state's Certificate of Need program. The task force is to consider the results of JLARC's audit in developing its recommendations.

### STUDY APPROACH

Since DOH's Certificate of Need program staff maintain limited historical electronic data on their applications, JLARC staff built a database of all applications on which DOH reached a decision between January 2000 and December 2005. The database consists of decisions that were reached and finalized during that time period, and thus does not include applications that are still under appeal. JLARC analyzed certain standardized data elements from the database to develop statistics on all applications during this period.

JLARC staff also used the information on those applications in the database to select 21 applications as case studies for more in-depth review. JLARC staff reviewed at least two applications for each of the following types: change in hospital bed capacity, new tertiary service, nursing home bed addition, hospice, home health, ambulatory surgical center, new kidney dialysis facility, and kidney dialysis station addition. Within each of those types, JLARC staff selected comparable applications considered at similar times with, when possible, differing outcomes. See Appendix 3 for more information on the case study applications. JLARC staff



also conducted research on the practices of other states' Certificate of Need programs. In addition, JLARC staff conducted interviews with state agency staff.

## REPORT ORGANIZATION

**Chapter 2** describes the Certificate of Need **application review process** and assesses the **timeliness of decisions** on applications.

**Chapter 3** assesses the degree to which DOH's rules and staff practices comply with **statutory review criteria**. The chapter also reports on the **sources of information** used by Certificate of Need staff in making application decisions, and reviews the **consistency** in the analysis and decisions on Certificate of Need applications.

**Chapter 4** discusses requests for **reconsideration** and **appeals** of Certificate of Need decisions.

**Chapter 5** assesses the Certificate of Need program staff's **monitoring** of issued Certificates of Need.

**Chapter 6** describes the **revenues, expenditures, and staffing** of the Certificate of Need program, and assesses the **measurement and reporting of the program's performance**.

**Chapter 7** summarizes the report's **findings and recommendations**. These findings and recommendations on key topics are also discussed in Chapters 2 through 6.



# CHAPTER TWO: APPLICATION PROCESS AND TIMELINES

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## CHAPTER HIGHLIGHTS

Certificate of Need program staff review applications using one of two main types of review: regular or concurrent. Regardless of the type of project or the type of review, there are several steps that all Certificate of Need applications go through. Statute sets limits on the time allowed for each step. The Certificate of Need program is not meeting the statutory deadlines for many applications.

## TYPES OF CERTIFICATE OF NEED REVIEWS

As provided in statute, Certificate of Need staff have two primary methods for reviewing applications: regular review and concurrent review.<sup>2</sup> Most applications go through a **regular review**. Staff review these applications individually beginning at the time of submission. However, under current practice, if two or more applications for similar projects in the same service area are submitted at about the same time, Certificate of Need staff review them side-by-side. In the past, staff would only do so if the applicants agreed to such a comparative review.<sup>3</sup>

Although most applications go through a regular review, certain types of applications go through a **concurrent review**. For concurrent reviews, the Department of Health (DOH) establishes a schedule of when they will review certain types of applications so that all applications for these project types are reviewed at the same time. For example, hospice care center applications are due in November of each year so that Certificate of Need staff can look at all hospice care center applications at the same time.

Two additional review options with shorter timeframes are referred to in statute and established in rule: expedited review and emergency review.<sup>4</sup> However, these types of review can only be used in specific circumstances. An expedited review can be used for instances such as correcting a deficiency or establishing a research project. Emergency review is for projects that are required to maintain or restore basic and essential patient services. The Certificate of Need program does not often conduct expedited or emergency reviews.

## STEPS IN THE CERTIFICATE OF NEED REVIEW PROCESS

Each Certificate of Need application goes through a series of steps before DOH decides to approve or deny the application. The following exhibit shows the steps that all applications go through, regardless of the type of review. To provide an idea of how much time each step is to take, the diagram includes the amount of time allowed for each step during the regular review process as **set by statute and rule**.<sup>5</sup> Some of these required timelines set the maximum amount of time *between* steps; in the following diagram, these are marked with arrows. Other timelines are for the amount of time an individual step should take; these are marked by a number of days for that individual step.

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<sup>2</sup> RCW 70.38.115.

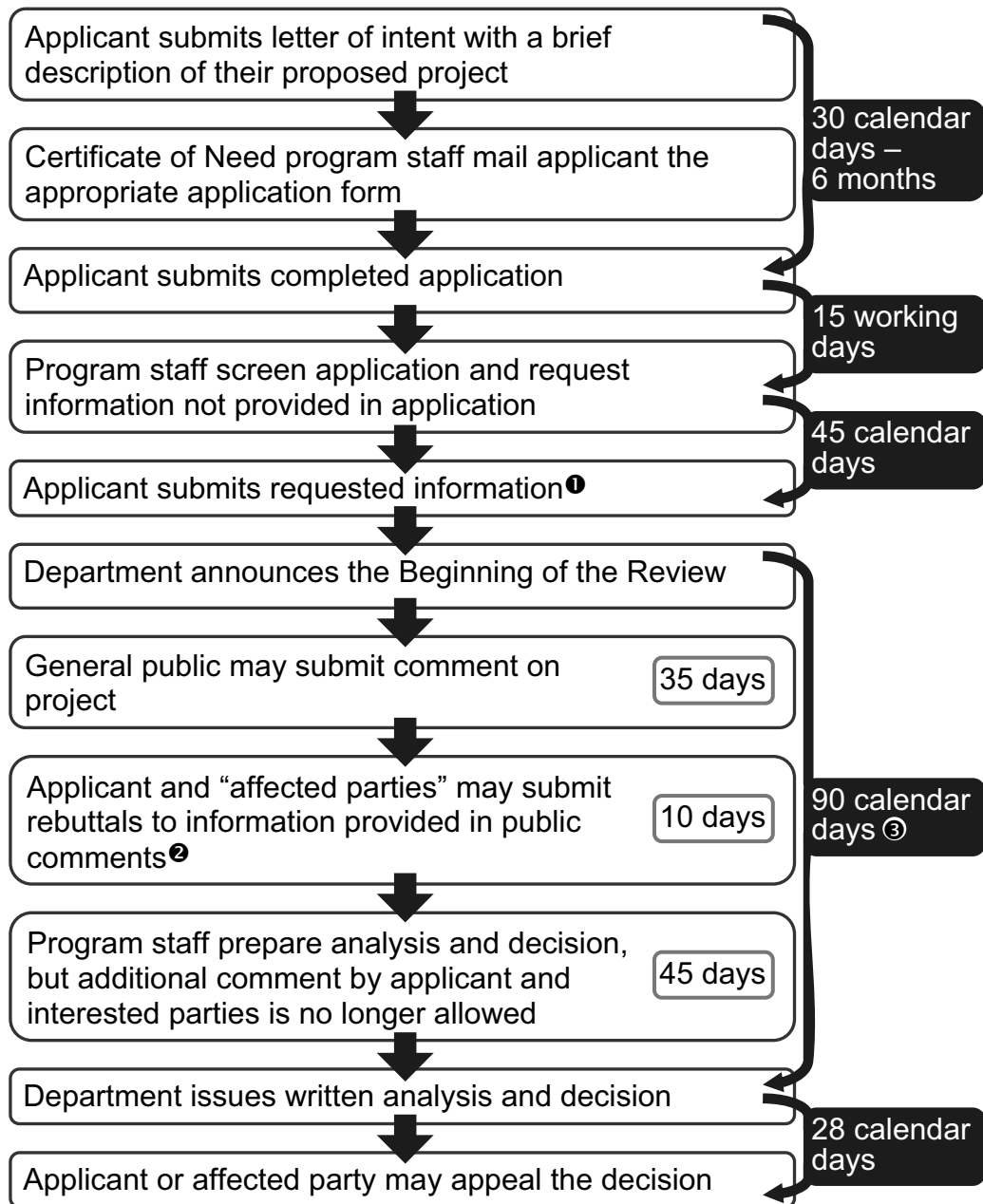
<sup>3</sup> A set of health law judge rulings (Docket Nos. 02-04-C-1042CN and 04-06-C-2003CN) prompted this change.

<sup>4</sup> RCW 70.38.115 and WAC 246-310-110.

<sup>5</sup> RCW 70.38.115 and WAC 246-310.

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Exhibit 2: Certificate of Need Process and Required Timelines



- ❶ Screening steps may repeat if applicant does not submit all requested information or program staff determine that they need additional information.
- ❷ According to WAC 246-310-010, affected parties: (1) are located or reside in the service area; (2) testified at a public hearing or submitted written evidence; and (3) requested in writing to be informed of the program’s decision.
- ❸ This can be extended up to 30 days. Also, if DOH declares a pivotal unresolved issue that cannot be resolved without more information, DOH can extend the timeframe another 30 days.

Source: JLARC analysis of statute, rule, and DOH documents.

## TIMELINESS OF DECISIONS

After reviewing the timelines established in statute and rule, JLARC staff reviewed the actual timeliness of Certificate of Need decisions. Since most applications that we reviewed went through the regular review process and Certificate of Need staff reviewed these applications individually without coordinating them with the review schedules for other applications, JLARC staff focused our review on the timeliness of applications that went through the regular review process.

We looked at DOH's performance on two milestones for which statute sets specific deadlines: (1) the number of days between when the application is submitted and when Certificate of Need staff screen the application and request additional information from the applicant; and (2) the number of days between the Beginning of the Review and when the Department issues the program staff's analysis and the decision on the application. The main reason that we focused on these two milestones is that many of the other timelines shown in Exhibit 2 are dependent on the actions of the applicant and are not a performance indicator for Certificate of Need program staff.

### Screening

DOH is required by statute to screen an application within 15 *working* days of receiving the application.<sup>6</sup> Of the applications for which a decision was reached and finalized from 2000 through 2005, program staff screened 58 percent of applications within the required timelines.

They did not meet the screening deadline for 42 percent of applications. Of the applications that the program did not screen within statutory timelines, the average amount of time between application receipt and screening was 21 working days.

### Application Decision

Statute limits DOH's review of an application to 90 *calendar* days, although the Department can extend this by up to 30 days. Additionally, if the Department declares a pivotal unresolved issue that cannot be resolved without additional information from the applicant, then the Department can extend the timeframe an additional 30 days.

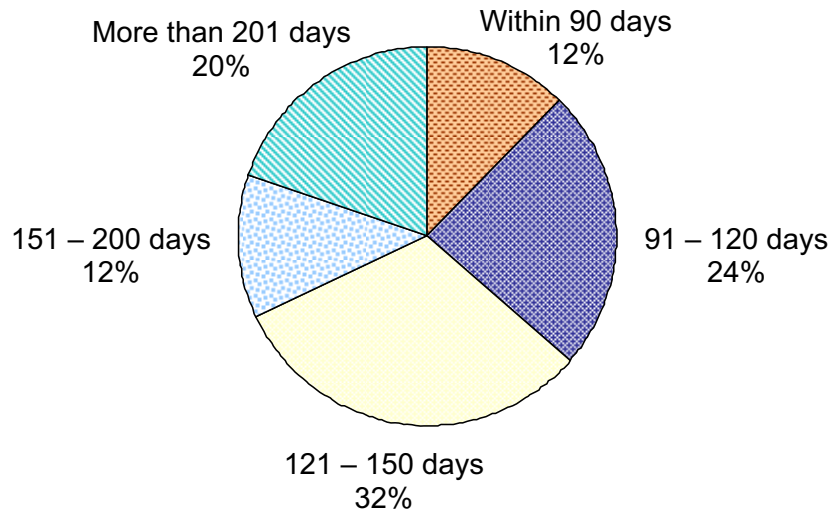
As shown in Exhibit 3 on the following page, of the applications for which decisions were reached and finalized from 2000 through 2005, DOH only reached 12 percent of decisions in less than 90 days. Allowing for a possible 30-day extension, they reached an additional 24 percent of decisions within 120 days. The Department reached more than 60 percent of decisions after 120 days.

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<sup>6</sup> RCW 70.38.115.

Performance Audit of the Certificate of Need Program

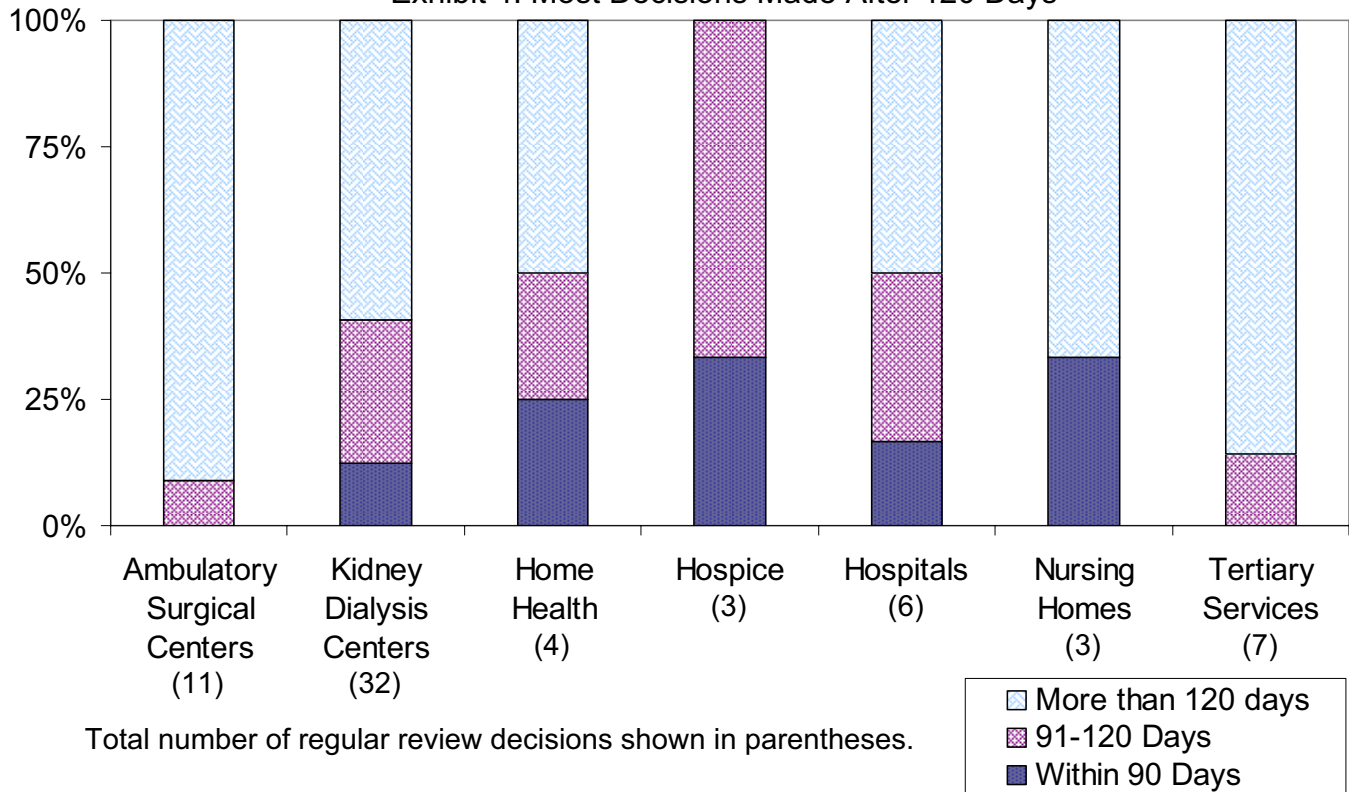
Exhibit 3: Over Half of Decisions Reached after 120 Days



Source: JLARC analysis of regular review applications in JLARC's database of Certificate of Need decisions reached and finalized from 2000 through 2005.

Exhibit 4, below, shows the timeliness of decisions by project type. DOH made all regular review hospice decisions in less than 120 days. However, for all other types of projects, the Department reached its decisions for at least half of those applications after 120 days. DOH reached less than 15 percent of decisions on tertiary services or ambulatory surgical centers in less than 120 days.

Exhibit 4: Most Decisions Made After 120 Days



Source: JLARC analysis of regular review applications in JLARC's database of Certificate of Need decisions reached and finalized from 2000 through 2005.

## Finding and Recommendation on Timeliness of Reviews

**Finding:** The Department of Health is not meeting statutory timeframes for *screening* applications in 42 percent of applications. Additionally, we found that the Department is not *reaching decisions* on 64 percent of applications within statutory timeframes, even when factoring in a possible 30-day extension.

**Recommendation:** The Department of Health should identify strategies for meeting established statutory timelines for Certificate of Need applications.





# CHAPTER THREE: APPLICATION DECISIONS

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## CHAPTER HIGHLIGHTS

Certificate of Need review criteria are established in statute. However, program staff are not fully applying all of those criteria in reviewing applications. Department of Health (DOH) rules, as adopted in the Washington Administrative Code (WAC), identify four basic criteria for reviewing applications, and provide guidance on how to apply those criteria.

In applying those criteria, program staff rely upon information provided by the applicant, by interested members of the community, and through their own research. More information is consistently collected and maintained by state agencies for facilities and services that are licensed by the state than for those that are not licensed by the state. This information is available to assist DOH staff as they evaluate applications.

The Department approves the vast majority of applications, and, of those, nearly two-thirds are approved with specific conditions that the applicant must agree to meet. In the applications JLARC reviewed, there appear to be some inconsistencies in how applications are analyzed, but the ultimate decisions on applications do not appear to be inconsistent with one another.

## COMPLIANCE WITH STATUTORY REVIEW CRITERIA

A set of **13 criteria** for reviewing Certificate of Need applications is established in statute.<sup>7</sup> A key question in assessing the performance of the Certificate of Need program is whether decisions on applications comply with those criteria. JLARC staff looked to DOH's rules and the applications selected as case studies in order to address this question.

DOH's rules identify four basic criteria for reviewing all applications: **need, financial feasibility, structure and process of care (quality), and cost containment**. Rules establish guidance for determining whether a proposed project meets those four criteria.

In reviewing applications for which specific guidance is not provided in rule, program staff may consult available guidelines or professional standards of care related to the proposed facility or service. For instance, in reviewing applications for neonatal intensive care services, staff have relied on the Washington State Perinatal Level of Care Guidelines developed by the Perinatal Advisory Committee. In reviewing applications for ambulatory surgical centers dedicated to endoscopic procedures, staff relied upon the Guidelines for Office Endoscopic Services developed by the Society of American Gastrointestinal Endoscopy Surgeons. Additionally, program staff rely on the 1987 State Health Plan for need methodologies and the definition of service areas for certain types of projects.

The following exhibit identifies the 13 review criteria established in statute. For each statutory criterion, we provide the following:

- Which of the four basic review criteria in rule (need, financial feasibility, structure and process of care, cost containment) include that criterion;
- The Certificate of Need staff's application of the criterion in their analysis of the applications that JLARC reviewed for our case studies; and
- JLARC staff's assessment of program staff's implementation of that criterion in the case study applications.

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<sup>7</sup> RCW 70.38.115(2).

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Exhibit 5: Implementation of Statutory Review Criteria

Statutory Criteria	Rule Criteria	Staff Implementation	Assessment of Implementation
<b>NEED</b>			
<b><i>Need of the population to be served for proposed services</i></b>	Need	In their analysis of applications, program staff spend a great deal of time and effort on the determination of need.	<b>Full</b>
<b>ACCESS</b>			
<b><i>Extent to which proposed health services will be accessible to all residents of the area to be served</i></b>	Need	Program staff are not conducting all of the required assessments provided in rule. Program staff primarily rely on the admissions and charity care policies provided by the applicant.	<b>Partial</b>
<b><i>In the case of hospital applications, whether the hospital meets or exceeds the regional average level of charity care</i></b>	Need	Program staff regularly cite historical charity care data collected and maintained by DOH in conducting their analysis of applications involving hospitals.	<b>Full</b>
<b>QUALITY</b>			
<b><i>Quality of care provided by existing services or facilities in the past</i></b>	Structure and Process of Care	Program staff use the regulatory expertise within DOH and DSHS, as well as regulatory agencies in other states, to verify the records of facilities and health care professionals related to a proposed project.	<b>Full</b>
<b>COSTS</b>			
<b><i>Financial feasibility and the probable impact of proposal on the cost of and charges for providing health services in the community to be served</i></b>	Financial Feasibility and Cost Containment	Program staff focus a great deal of attention on financial feasibility, including using the facility-specific expertise within other areas of DOH and DSHS for financial analyses when appropriate. <i>However</i> , staff rarely consider the impacts of the proposed project on the costs and charges of health care services in the greater community.	<b>Partial</b>
<b><i>Costs and methods of a proposed construction project and the probable impact of the project on the cost of providing health services by the person proposing the project</i></b>  <b><i>Costs and methods of a proposed construction project and the probable impact of the project on the cost and charges to the public of providing health services by other persons</i></b>	Financial Feasibility and Cost Containment	Program staff rarely consider the impacts of the proposed project on the costs and charges of health care services in the greater community.	<b>Partial</b>

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Statutory Criteria	Rule Criteria	Staff Implementation	Assessment of Implementation
ALTERNATIVES			
<b>Improvements or innovations in the financing and delivery of health services which foster cost containment and serve to promote quality assurance and cost-effectiveness</b>	Financial Feasibility, Structure and Process of Care, and Cost Containment	In applying the cost containment rule, under which this statutory criterion is most clearly established, program staff primarily react to the applicant's discussion of possible alternatives to the proposed project without independently exploring any other alternatives or modifications to the proposal.	<b>Partial</b>
<b>Availability of less costly or more effective alternative methods of providing proposed services</b> <b>Availability of alternative uses of project resources for the provision of other health services</b>	Cost Containment	Program staff primarily react to the applicant's discussion of possible alternatives to the proposed project without independently exploring any alternatives. Frequently, the applicant only discusses the alternative of the "status quo."	<b>Partial</b>
<b>Efficiency and appropriateness of the use of existing services and facilities similar to the proposed health services</b>	Need	This criterion is largely addressed within the determination of need criterion, which is a primary area of focus for program staff.	<b>Full</b>
<b>In the case of nursing home applications, the availability of other nursing home beds in the planning area to be served and the availability of other services in the community to be served</b>	Need	Only applicable for one application that JLARC reviewed.	<b>Indeterminate</b>
SPECIAL CONSIDERATIONS			
<b>The special needs and circumstances of osteopathic hospitals, nonallopathic services and children's hospitals</b> <b>In the case of health services to be provided, the need for and the availability in the community of services and facilities for osteopathic physicians and surgeons and allopathic physicians and their patients</b>	Need (Children's hospitals are not included.)	Program staff did not discuss these special needs and circumstances in the applications that JLARC reviewed. And JLARC reviewed no applications by an osteopathic or nonallopathic facility.	<b>Indeterminate</b>

Source: JLARC analysis of statute, rule, and case study applications.

As shown in the exhibit above, there are three areas where DOH is not fully implementing statutory criteria. First, Certificate of Need program staff do not evaluate proposed projects according to all of the criteria established in rule to determine a proposed project's accessibility

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## Performance Audit of the Certificate of Need Program

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to all residents. Second, program staff focus their review of financial feasibility on the impact to the applicant and their patients, and not the costs to other providers and patients in the community. Finally, the review of alternative options to a proposed project is limited.

Notably, two of the three areas in which Certificate of Need staff are not fully applying statutory review criteria seem to require more information and more complex analysis than is required for the other criteria.

- In order to determine the impact of a project on the costs of and charges for health care services in the greater community, it would be necessary to have detailed utilization and financial information about existing providers and services in the community. Certificate of Need staff could then use that information, in addition to the information provided by the applicant, to analyze the community-wide impact of the combined providers and services.
- To assess possible alternatives to a proposed project, Certificate of Need staff would need detailed information on the full range of potential options for providing the proposed services. Certificate of Need staff could then use that information, in addition to the information provided by the applicant, to analyze the best possible approach to providing the proposed services.

Full implementation of these two areas of statutory criteria may require more expertise on health economics and planning than the Certificate of Need staff currently has. In addition, the program staff's implementation of these criteria is made more difficult by not having an up-to-date State Health Plan to consult.

### Finding and Recommendation on Compliance with Statutory Review Criteria

**Finding:** Certificate of Need program staff are not fully applying all of the criteria established in statute for reviewing Certificate of Need applications.

**Recommendation:** The Department of Health should identify strategies to ensure that all statutory criteria for reviewing Certificate of Need applications are fully applied. The Department may also recommend amendments to statutory criteria if necessary to reflect the state's current health care system.

### INFORMATION USED IN REVIEWING APPLICATIONS

Much of the information used in decision-making on Certificate of Need applications comes directly from the applicant or from public comment. In performing their analysis of applications, program staff also use the expertise of staff in other offices of DOH and in the Department of Social and Health Services (DSHS) to learn more about the quality, financial feasibility and cost containment, and need for the project. For instance, DOH's Office of Hospital and Patient Data Systems provide assistance with the financial feasibility analysis for applications involving hospitals and DSHS' Office of Rates Management assists with the evaluation of applications involving nursing homes.

For each of the four criteria in rule, the sources of information that Certificate of Need program staff use in reviewing Certificate of Need applications include the following:

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### Need

- Washington's **Office of Financial Management** and the U.S. **Census Bureau** develop official population estimates.
- The **Northwest Renal Network** is a private not-for-profit corporation that is funded by the U.S. Centers for Medicare and Medicaid Services to collect and analyze data on patients enrolled in the Medicare End Stage Renal Dialysis program. They provide data on the number of kidney dialysis patients around the state.
- The **Office of Hospital and Patient Data Systems** within DOH collects and maintains patient, discharge, utilization, and financial information on hospitals through the Comprehensive Hospital Abstract Reporting System (CHARS).
- For facilities that are not licensed, the Certificate of Need staff **survey existing providers** to learn about the number of providers and patients.

### Structure and Process of Care

- The **Office of Health Care Survey** within DOH conducts on-site surveys of health facilities to ensure their compliance with state licensing and federal Medicare certification standards. However, not all projects that require a Certificate of Need are licensed or certified so this quality information is not available on all applicants, including many ambulatory surgical centers.
- The **Medical Quality Assurance Commission** licenses physicians and physician assistants in Washington.
- The **Northwest Renal Network** collects and analyzes data on kidney dialysis patients and monitors quality of care.
- The U.S. **Centers for Medicare and Medicaid Services** maintains information on Medicare-qualified providers. Certificate of Need program staff use their data to review the quality of care of hospice care and home health applications.
- The Certificate of Need staff also survey **regulatory agencies in other states** when the applicant has out-of-state facilities.

### Financial Feasibility and Cost Containment

- In addition to maintaining information relating to need, the **Office of Hospital and Patient Data Systems** also collects financial information on hospitals. Their staff help analyze the financial feasibility of hospital-based projects.
- The **Office of Rates Management** in DSHS calculates rates for Medicaid-approved nursing homes. Their staff help analyze the financial feasibility of nursing homes.
- The U.S. **Centers for Medicare and Medicaid Services** maintains information on Medicare-qualified providers. Certificate of Need program staff use their data to review the financial feasibility of hospice care and home health applications.

For certain types of projects, including hospital-based projects and nursing homes, Certificate of Need program staff are able to draw upon information from other state agencies and programs. This provides program staff with easily accessible, independent information to verify the information and arguments provided by the applicant and other members of the community. However, this level of information is not available for other types of projects, including ambulatory surgical centers, because these facilities are not licensed by the state.

### Finding and Recommendation on Sources of Information

**Finding:** More information is consistently collected and maintained by state agencies for facilities and services that are licensed by the state, such as hospitals, than for those that are not, such as ambulatory surgical centers. As a result more complete information is available to assist the Department of Health when reviewing applications for licensed facilities and services.

**Recommendation:** The Legislature should consider establishing consistent basic reporting requirements for all services and facilities that are subject to Certificate of Need review so that information related to each type of application will be readily available and reliable.

## APPLICATION DECISIONS

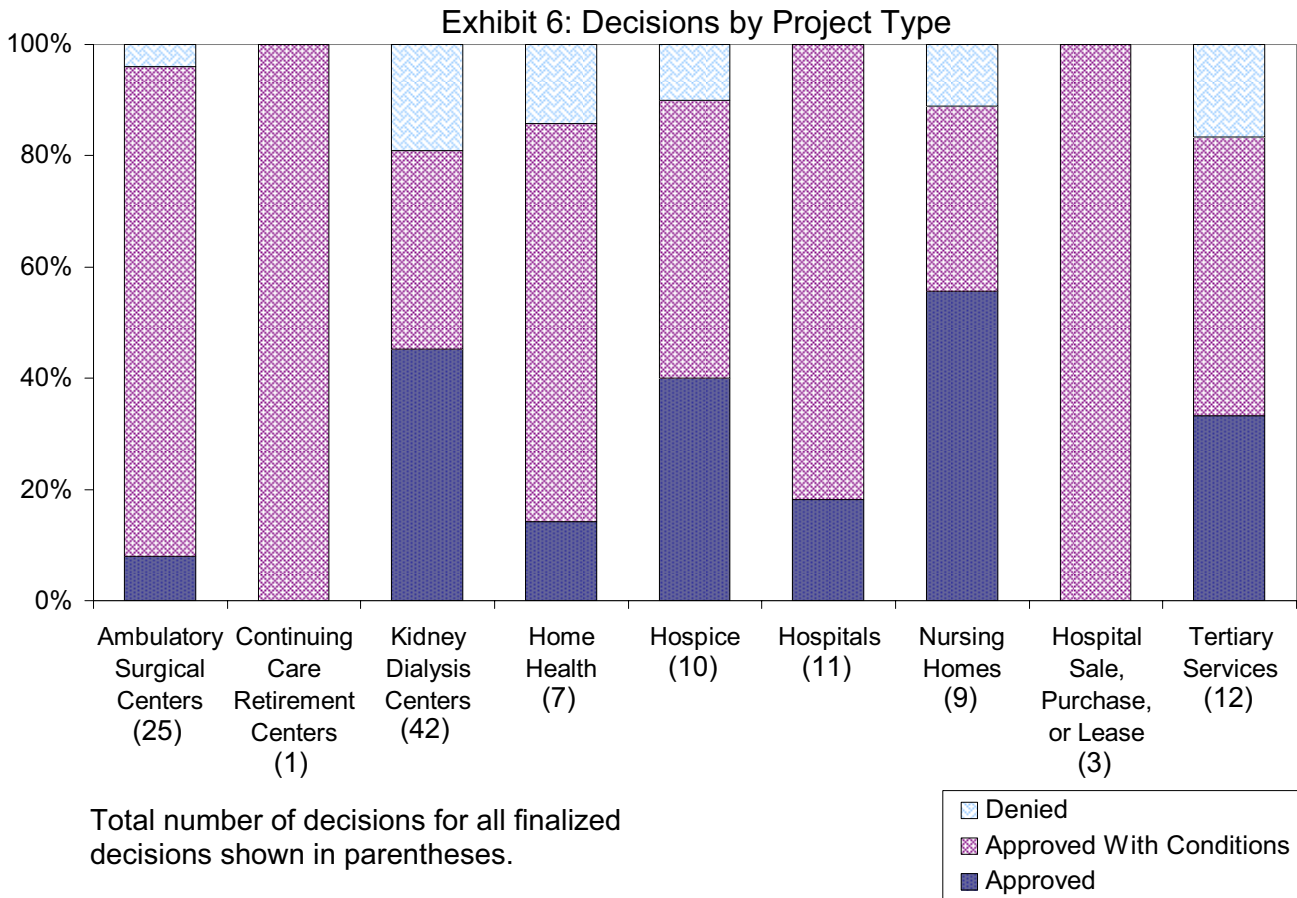
Upon completing their review of an application, program staff reach a decision on that application. DOH may approve, deny, or approve the application with conditions. For 2000 through 2005, the Department approved 106 applications (88 percent).<sup>8</sup> Of these approved applications, DOH put conditions, that is, requirements the applicant must meet, on 69 decisions (65 percent). Examples of conditions include providing a copy of an executed lease or contract between the project and its medical director, or providing a specified amount of charity care once the project is up and running.

The following table illustrates the decisions reached for applications finalized from 2000 through 2005.

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<sup>8</sup> This number does not include 33 decisions that are still under appeal.

## Performance Audit of the Certificate of Need Program



Source: JLARC database of Certificate of Need decisions reached and finalized from 2000 through 2005.

### Consistency

In conducting case studies, JLARC staff reviewed the application analyses conducted by program staff. The application analysis consists primarily of a description of the program staff's assessment of an application's compliance with the relevant criteria, but also includes a list of the data sources that the program staff relied on in reviewing the application.

JLARC staff discovered that program staff did not consistently cite the same data sources in their analyses of applications for similar facilities or services. However, some of those differences were due to the differences among the specifics of proposed projects. Public comment often played a significant role in the program staff's analysis. In some cases, it was unclear whether program staff would have addressed critical issues related to the application in the absence of those public comments.

Of the 120 applications for which a decision was reached and finalized for 2000 through 2005, only two decisions have been overturned by a judge. Although these numbers exclude applications that are still under appeal, and those open appeals outnumber the appeals that have been fully resolved, this is an indicator that the consistency of final decisions on applications is not a significant problem. If there were a pattern of inconsistency in decisions, then we would expect a higher rate of decisions overturned on appeal.

Since Certificate of Need program staff maintain limited historical electronic data on their analysis and final decisions on applications, it is very difficult to reach any conclusions about the consistency of those analyses and final decisions over time.

## Finding and Recommendation on Consistency

**Finding:** Due to the limitations of JLARC staff's review and the large number of variables to consider, we are unable to definitively conclude whether decisions on Certificate of Need applications are consistent. Even with these limitations, there do appear to be some inconsistencies in the *analysis* of applications, but the *ultimate decisions* on applications do not appear to be inconsistent with one another.

**Recommendation:** In order to ensure ongoing consistency in both the analysis and final decisions for Certificate of Need applications, the Department of Health should electronically track program staff's application reviews and issued decisions, including the methods used in reviewing applications and the reasons for the final decisions. The Department of Health can then use this information to perform regular and ongoing reviews of decisions.



# CHAPTER FOUR: APPEALS OF CERTIFICATE OF NEED DECISIONS

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## CHAPTER HIGHLIGHTS

Over the past five years, applicants or affected parties appealed 30 percent of Certificate of Need decisions. A total of 49 percent of applications were appealed in 2005. The Department of Health (DOH) allocates funds from Certificate of Need application fees to cover the costs to DOH of these appeals.

## TYPES OF APPEALS

If a Certificate of Need **applicant or an affected party** is dissatisfied with a Certificate of Need decision, they may appeal that decision. There are three main ways that they can do this: reconsideration request, adjudicative appeal, and judicial appeal.

### Reconsideration

Applicants or affected parties can request that DOH reconsider its decision on an application. According to rule, the grounds for a reconsideration hearing include, but are not limited to:

- Significant new information is available that could not have been presented while the application was being reviewed;
- The factors or circumstances the program relied on in making its decision changed; or
- There is evidence that the Certificate of Need program did not follow adopted procedures in making a decision.<sup>9</sup>

DOH does not always grant a reconsideration hearing, but, of 120 applications that were decided and finalized from 2000 through 2005, six were granted a reconsideration hearing.<sup>10</sup> DOH reversed its decision on five of those applications. One application is currently being reconsidered, but as of the writing of this report, a decision has not yet been reached.

### Adjudicative and Judicial Appeal

**Applicants and affected parties may also appeal a decision on an application.** They can file an adjudicative appeal with an administrative health law judge. Subsequently, they can file a judicial appeal in Superior Court.

Of the decisions reached and finalized for 2000 through 2005, 14 decisions were appealed and resolved. Of these appeals, only two decisions were overturned. An additional 33 applications are still under adjudicative or judicial appeal.

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<sup>9</sup> WAC 246-310-560.

<sup>10</sup> The Department does not maintain data on the number of reconsideration hearings requested, so we do not know how many requests were made for those 120 applications.

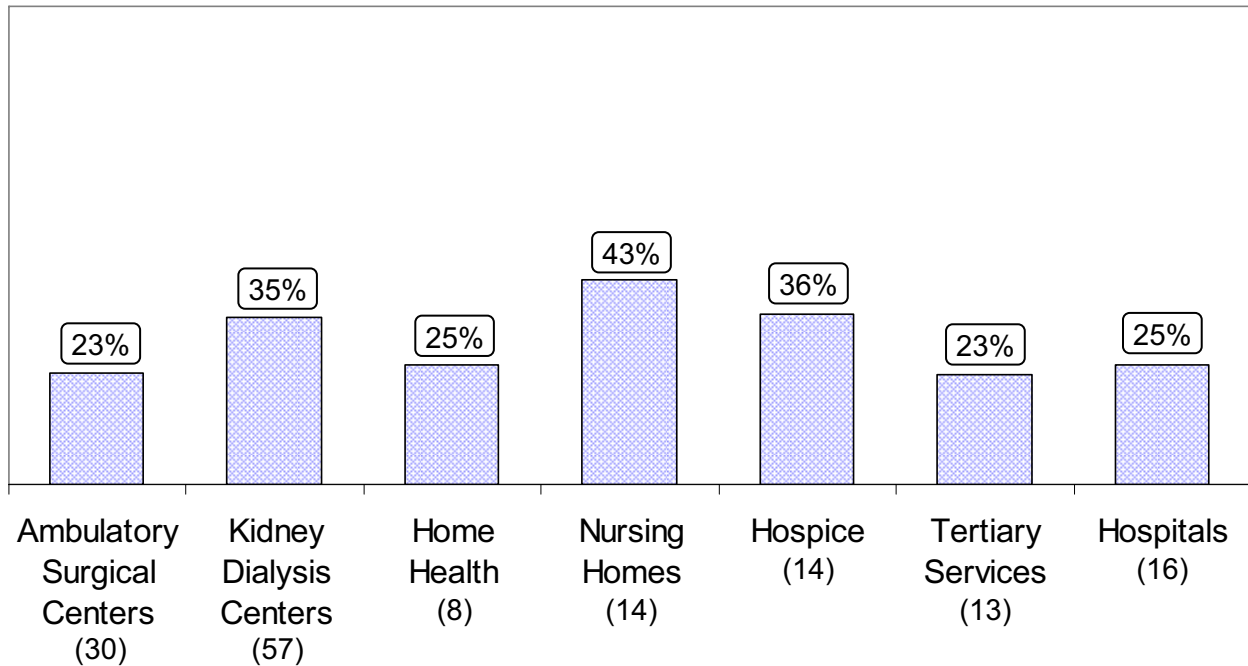
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## Performance Audit of the Certificate of Need Program

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In the period from 2000 through 2005, **30 percent of decisions were appealed**. The following exhibit shows the percentage of each type of application that was appealed. This exhibit includes both appeals that have been resolved and appeals that are still active. As shown in this exhibit, 43 percent of all nursing home applications have been appealed.

Exhibit 7: Percentage of Each Type of Application That is Appealed Varies



Total applications, both appealed and not appealed, are shown in parentheses.

Source: JLARC database of Certificate of Need decisions and Certificate of Need program data on active appeals.

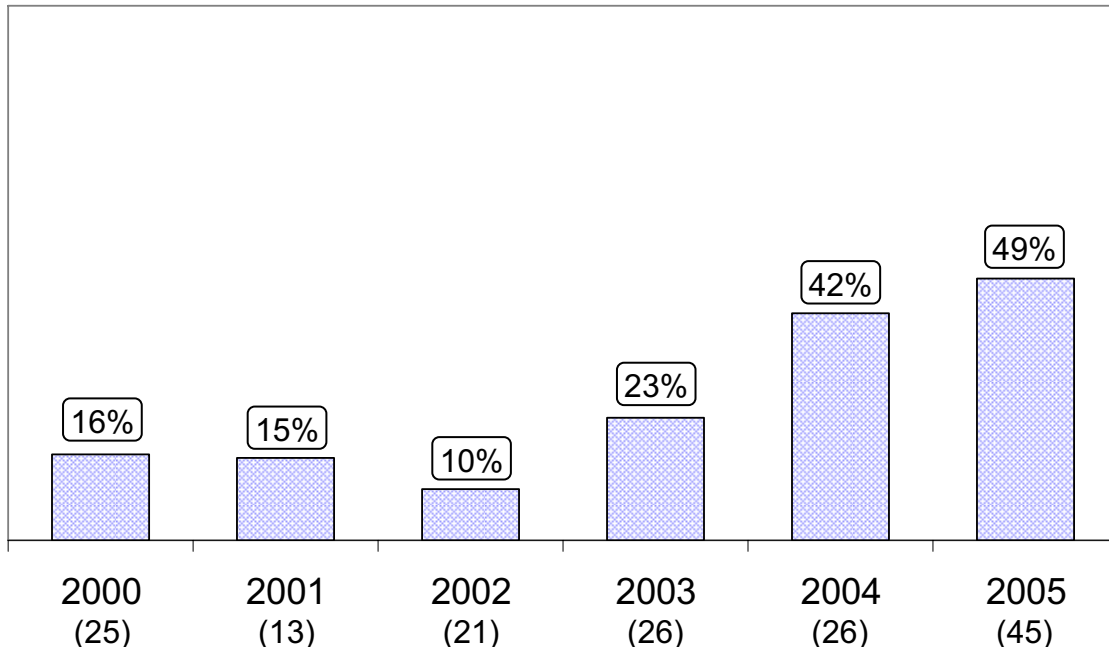
Exhibit 8 on the following page shows the percentage of applications that were appealed during each of the last five years. Sixteen percent of applications decided in 2000 were appealed. In 2005, 49 percent of applications were appealed.

There is not one clear explanation for why the appeal rates were higher in 2004 and 2005 than in previous years. Different factors were at play in each of these two years. In 2004, eight of the eleven appeals were of decisions to *approve* kidney dialysis center applications. In 2005, the Department denied 49 percent of all applications, which is a significantly higher denial rate than in previous years. So in 2004, the appeal rate was driven by the number of appeals by competitors of approved applications, while in 2005, the appeal rate was driven by the number of appeals by denied applicants.

Many of the appeals from 2005 are still being adjudicated. As a result, we cannot determine whether recent appeals will continue to be upheld by judges.

## Performance Audit of the Certificate of Need Program

Exhibit 8: Percentage of Decisions Reached Each Year That Are Appealed

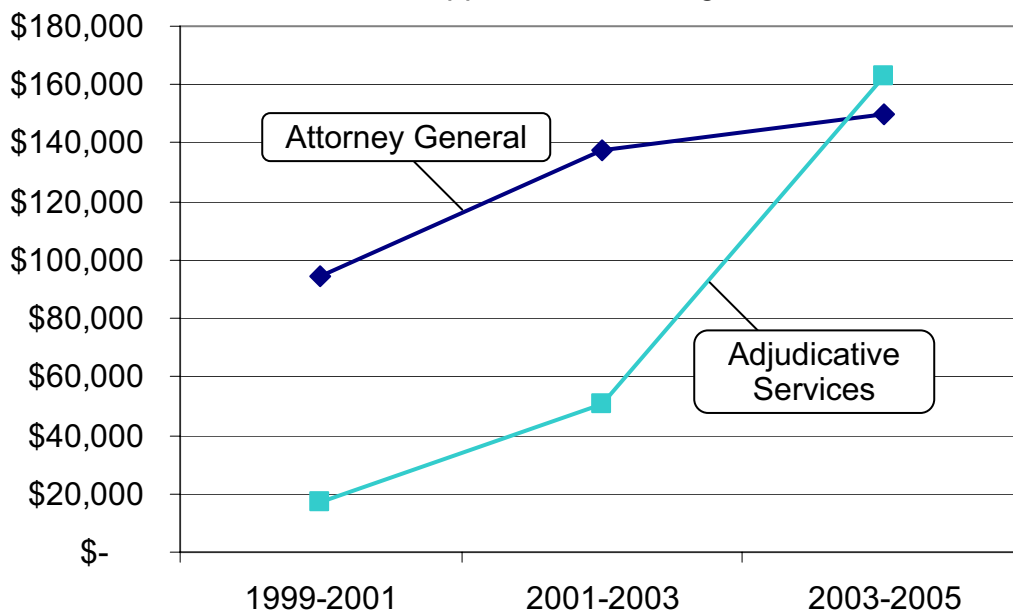


Total applications, both appealed and not appealed, are shown in parentheses.

Source: JLARC database of Certificate of Need decisions and Certificate of Need program data on active appeals.

We also looked at the trends in the cost of appeals for the Certificate of Need program. This includes the costs to the program for services provided by the Office of the Attorney General and the costs that the program must pay to DOH's hearings unit for adjudicative appeals. As shown in the exhibit below, these costs have increased since the 1999-2001 Biennium.

Exhibit 9: Cost of Appeals for the Program Per Biennium



Source: JLARC analysis of Certificate of Need Program expenditure data.

## Performance Audit of the Certificate of Need Program

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Once DOH has approved a Certificate of Need application and any appeals are resolved, the applicant may move ahead on the proposed project. The following chapter briefly discusses how DOH monitors those approved projects.

# CHAPTER FIVE: MONITORING OF APPROVED PROJECTS

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## CHAPTER HIGHLIGHTS

Statute requires the Department of Health (DOH) to monitor approved projects to assure conformance with issued Certificates of Need. Program staff monitor uncompleted projects that have received Certificate of Need approval. However, they do not monitor completed projects for conditions of issued Certificates of Need that apply once a project is completed and begins providing services.

## BACKGROUND ON CERTIFICATE OF NEED REQUIREMENTS

When DOH issues a Certificate of Need, there are limitations on it:

- The certificate specifies the type of service to be provided and the location of that service.
- The certificate is only valid for two years. Before it expires, the applicant must commence the project.<sup>11</sup>
- The certificate specifies the amount of the approved capital expenditures for the project. This amount may vary from the amount that the applicant provided in the application process.
- Some Certificates of Need include conditions that the applicant must meet. Some of those conditions must be met before the project is completed, such as the applicant may be required to provide an executed copy of a lease. Other conditions can only be met after the project is completed and the applicant has begun operation. An example of this is a requirement for providing a specific level of charity care.

## STATUTORY REQUIREMENTS

State law requires DOH to monitor approved projects to assure conformance with issued Certificates of Need.<sup>12</sup> State law also grants DOH the authority to suspend or revoke an issued Certificate of Need, as well as bring any action to enjoin a violation or the threatened violation of any statute or rule concerning Certificate of Need.<sup>13</sup>

## DEPARTMENT RULES AND IMPLEMENTATION

Rules adopted by DOH require them to monitor the *costs and components* of approved projects to assure conformance with issued Certificates of Need, which is a more limited requirement than is provided in statute. Under those rules, DOH must require quarterly progress reports from applicants who have been issued Certificates of Need. However, progress reports are no longer required once the project has been completed even if the Certificate of Need has not yet expired.<sup>14</sup>

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<sup>11</sup> RCW 70.38.125.

<sup>12</sup> RCW 70.38.125.

<sup>13</sup> RCW 70.38.115 and RCW 70.38.125.

<sup>14</sup> WAC 246-310-590.

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## Performance Audit of the Certificate of Need Program

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As required by rule, Certificate of Need program staff collect and review progress reports on a quarterly basis from all applicants to whom a Certificate of Need has been issued and whose approved projects are not yet complete. Program staff use a standard form for all projects, a portion of which is completed by program staff before being sent out to the applicant. Upon reviewing an applicant's progress report, program staff notify the applicant if any information provided in the report would warrant an amendment to the issued Certificate of Need.

It is important to note that any terms or conditions of an issued Certificate of Need that apply once a project is completed (e.g., required levels of charity care) are not monitored by Certificate of Need program staff since the Department only requires progress reports for uncompleted projects. Program staff have stated that compliance with any terms or conditions that apply once a project has been completed would be assessed retrospectively in the event that the same applicant applies for a Certificate of Need for a future project. In the case of the frequent condition of requiring an applicant to provide a specific level of charity care, such data is collected and maintained by DOH only for hospitals. For any other facilities, historical charity care data would have to be provided from the applicant.

### Finding and Recommendation on Monitoring

**Finding:** As described above, Certificate of Need program staff's monitoring of issued Certificates of Need does not fully comply with statutory requirements since it is limited to uncompleted projects.

**Recommendation:** In accordance with statute, the Department of Health should revise its monitoring practices to include completed projects, as appropriate, in order to ensure applicants' compliance with issued Certificates of Need.

# CHAPTER SIX: REVENUES, EXPENDITURES, AND PROGRAM MANAGEMENT

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## CHAPTER HIGHLIGHTS

The Certificate of Need program is solely supported by application fees. Since the number and type of applications varies from year to year, this can be an unpredictable funding source. In recent years, the program has made adjustments to staffing levels to control spending.

The Certificate of Need program reports on its activities and performance, but does not make this information available on the Internet so it is not readily available to applicants, stakeholders, and the public. In addition, the program does not make its application forms available on the Internet.

## REVENUES AND EXPENDITURES

Statute authorizes the Department of Health (DOH) to collect fees from applicants to cover the full cost of reviewing Certificate of Need applications and requests for exemption from review.<sup>15</sup> The program last received general fund state dollars in the 1999-2001 Biennium. Certificate of Need application fees are established in rule and vary by the type of project. Application fees for new projects range from \$8,432 for hospice care centers to \$30,293 for nursing homes.<sup>16</sup>

Exhibit 10 on the following page shows the revenues and expenditures for the Certificate of Need program. For the 2005-07 Biennium, the Certificate of Need program has estimated revenues of approximately **\$1.4 million**. The program's 2005-07 allotments, or expected expenditures, are approximately **\$1.6 million**. The program deferred \$402,224 in revenue from the 2003-2005 Biennium to the current biennium and will use these revenues to make up the difference between projected expenditures and revenues.

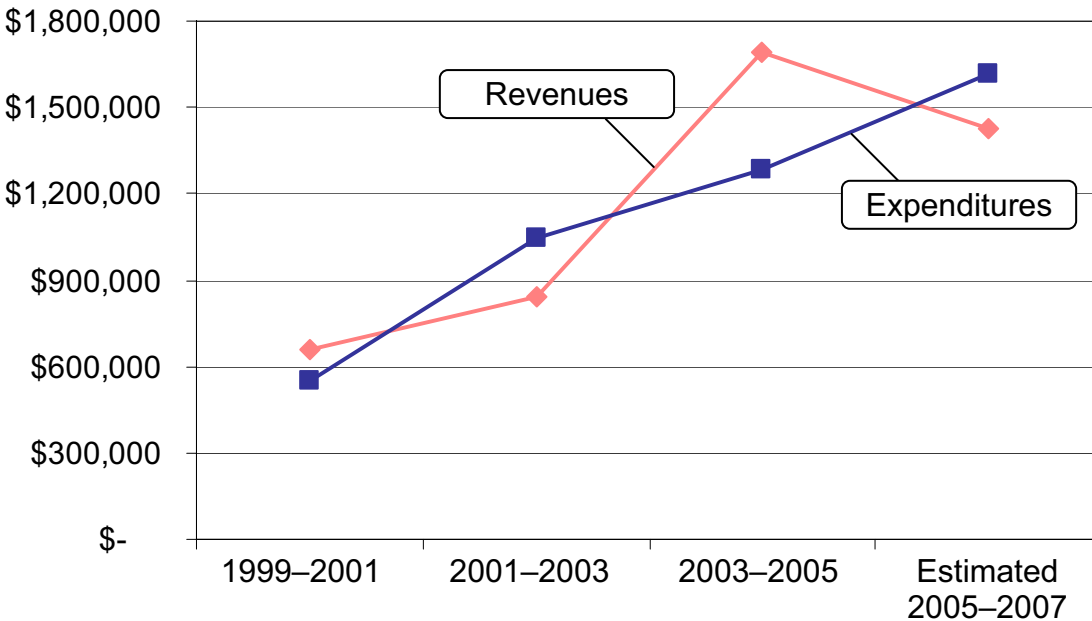
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<sup>15</sup>RCW 70.38.105(5).

<sup>16</sup>WAC 246-310-990.

## Performance Audit of the Certificate of Need Program

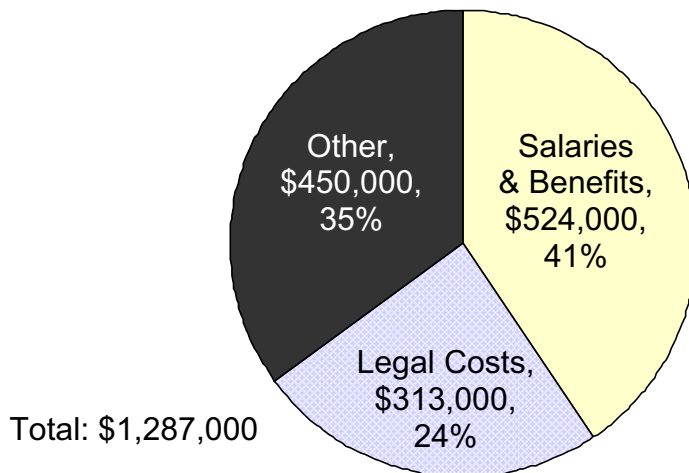
Exhibit 10: Expenditures and Revenues Per Biennium Have Increased



Note: 2005-07 revenue based on estimates and expenditures based on allotments.  
Source: JLARC analysis of expenditure data provided by the Certificate of Need program.

During the 2003-05 Biennium, 41 percent of the Certificate of Need program's almost \$1,290,000 expenditures were for salaries and benefits. An additional 24 percent of the expenditures were for the costs of appeals. This includes almost \$150,000 for the Attorney General's services and \$163,000 for DOH's adjudicative hearings unit.

Exhibit 11: Categories of Expenditures in the 2003 – 2005 Biennium



Source: JLARC analysis of expenditure data provided by the Certificate of Need program.



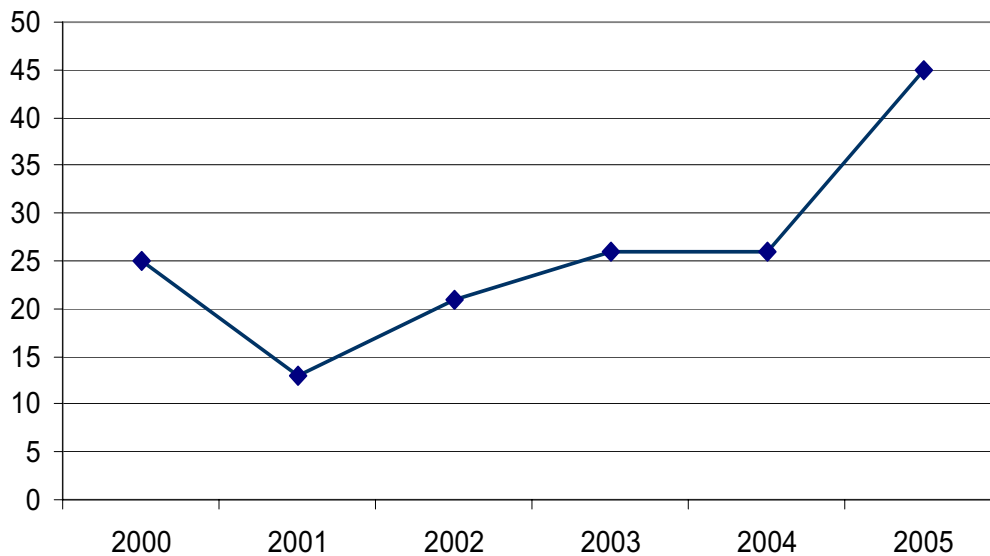
## STAFFING AND WORKLOAD

Currently, the Certificate of Need program has one manager, four analysts, and one administrative support person. Additionally, an executive manager is responsible for the Certificate of Need program and other programs.

The Certificate of Need program is funded by what can be an unpredictable source. In recent years, the program has made adjustments to staffing levels to control spending. For instance, the program's administrative support position was left vacant for nearly two years. During the course of this study, the program hired two analysts bringing them to a total of four, which is more than they have had at any other point in the last five years.

One of the challenges for the Certificate of Need program is that the workload is not constant. As shown in Exhibit 12, the number of applications the Department decided varies from year to year.

Exhibit 12: Number of Applications Decided Each Year Varies



Source: JLARC analysis of Certificate of Need decisions for 2000 through 2005.

## PERFORMANCE MEASURES AND PROGRAM REPORTING

DOH's only **performance measure** for the Certificate of Need program is the timeliness of decisions. This is a measure that is important to applicants. However, the Department does not report this measure to the public.

In addition to its performance measure, the Certificate of Need program uses **status reports** to update agency management on the program's activities. The Certificate of Need program distributes two reports internally: (1) a workload queue that summarizes the number of applications submitted, decisions made, and active appeals; and (2) a list of all applications currently being reviewed and the dates for key milestones. This second report also includes a column predicting whether the program expects to complete each application on time.

The Certificate of Need program also reports to stakeholders on its current activities. Every month, program staff mail a status report to subscribers. This detailed status report includes information on each pending application and its status. This report provides useful information, but it is not available electronically, and subscribers must pay to receive it. The report is not readily available to the public. Anyone interested in the status of an application for a proposed service in a particular community does not have ready access to that information without paying a subscription fee.

Additionally, this status report made available to subscribers does not include historical information about decisions made in prior years. Without this information, it is difficult for the public and stakeholders to review the program's actions over time.

### Program Reporting in Other States

We visited the websites for 30 Certificate of Need programs in other states. More than half of these states include status reports or other information about pending applications or past decisions on their websites. We also found that 26 states include blank application forms on their websites. None of this information is available on the Washington Certificate of Need webpage.

### Finding and Recommendation on Program Reporting

**Finding:** The Certificate of Need program reports on its activities and performance, but does not make this information available on the internet where it would be readily available to applicants, stakeholders, and the public. Additionally, the application forms are not available on the internet where they would be more accessible to applicants.

**Recommendation:** The Department of Health should better use its website about the Certificate of Need program to make more information and their applications available to the public. This information should include: (1) the application forms; (2) status reports on the program's activities; and (3) performance data for the program.

# CHAPTER SEVEN: FINDINGS AND RECOMMENDATIONS

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## Program Not Meeting Statutory Timelines

The Department of Health (DOH) is required by statute to screen an application within 15 working days, and reach a decision on an application within 90 calendar days from beginning of review. However, the Certificate of Need program is not consistently meeting those deadlines.

DOH is not meeting statutory timeframes for *screening* applications in 42 percent of applications. Additionally, we found that the Department is not *reaching decisions* on 64 percent of applications within statutory timeframes, even when factoring in a possible 30-day extension.

### **Recommendation 1**

**The Department of Health should identify strategies for meeting established statutory timelines for Certificate of Need applications.**

<b>Legislation Required:</b>	None to identify strategies, but may be required to implement strategies.
<b>Fiscal Impact:</b>	None to identify strategies, but may be required to implement strategies.
<b>Reporting Date:</b>	December 2006

## Not All Statutory Criteria Fully Applied by the Program

A set of **13 criteria** for reviewing Certificate of Need applications is established in statute. DOH's rules identify four basic criteria for reviewing applications. However, in implementing those criteria in rule, not all of the statutory criteria are fully applied by the program. There are three main issues here. First, program staff do not evaluate proposed projects according to all of the criteria established in rule to determine a proposed project's accessibility to all residents. Second, program staff focus their review of financial feasibility on the impact to the applicant and their patients, and not the costs to other providers in the community. Finally, the review of alternative options to the proposed project is limited.

### **Recommendation 2**

**The Department of Health should identify strategies to ensure that all statutory criteria for reviewing Certificate of Need applications are fully applied. The Department may also recommend amendments to statutory criteria, if necessary, to reflect the state's current health care system.**

<b>Legislation Required:</b>	None to identify strategies, but may be required to implement strategies.
<b>Fiscal Impact:</b>	None to identify strategies, but may be required to implement strategies.
<b>Reporting Date:</b>	December 2006

## Lack of Information about Unregulated Facilities

For certain types of projects, including hospital-based projects and nursing homes, Certificate of Need program staff are able to draw upon information from other state agencies and programs. This provides program staff with easily accessible, independent information to verify the information and arguments provided by the applicant as well as other members of the community. However, this level of information is not available for other types of projects, including ambulatory surgical centers, because these facilities are not licensed by the state.

### **Recommendation 3**

**The Legislature should consider establishing consistent basic reporting requirements for all services and facilities that are subject to Certificate of Need review so that information related to each type of application will be readily available and reliable.**

<b>Legislation Required:</b>	May be required.
<b>Fiscal Impact:</b>	Will be dependent upon the approach chosen by the Legislature.
<b>Reporting Date:</b>	None

## Inconsistencies in Analysis, but No Signs of Inconsistencies in Decisions

Since Certificate of Need program staff maintain limited historical electronic data on their analysis and final decisions on applications, it is very difficult to reach any conclusions about the consistency of those analyses and final decisions. Additionally, due to the limitations of JLARC staff's review and the large number of variables to consider, we are unable to definitively conclude whether or not decisions on Certificate of Need applications are consistent. Even with these limitations, there do appear to be some inconsistencies in the *analysis* of applications, but the *ultimate decisions* on applications do not appear to be inconsistent with one another.

### **Recommendation 4**

**In order to ensure ongoing consistency in both the analysis and final decisions for Certificate of Need applications, the Department of Health should electronically track program staff's application reviews and issued decisions, including the methods used in reviewing applications and the reasons for the final decisions. The Department of Health can then use this information to perform regular and ongoing reviews of decisions.**

<b>Legislation Required:</b>	None
<b>Fiscal Impact:</b>	JLARC assumes that this can be completed within existing resources.
<b>Reporting Date:</b>	July 2007

## Program Not Monitoring Completed Projects

Statute requires DOH to monitor approved projects to assure conformance with issued Certificates of Need. Program staff monitor uncompleted projects that have received Certificate of Need approval. However, they do not monitor completed projects for conditions of issued Certificates of Need that apply once a project is completed and begins providing services, even if the Certificate of Need has not expired.

**Recommendation 5**

**In accordance with statute, the Department of Health should revise its monitoring practices to include completed projects, as appropriate, in order to ensure applicants' compliance with issued Certificates of Need.**

<b>Legislation Required:</b>	None
<b>Fiscal Impact:</b>	JLARC assumes that this can be completed within existing resources.
<b>Reporting Date:</b>	December 2006

**Information on Program's Performance and Activity Not Available on the Internet**

DOH's one performance measure for the Certificate of Need program is the timeliness of decisions, but this is not reported to the public. Program staff produce a monthly status report on current applications that they mail to subscribers for a fee, but they do not make that report available on the program's webpage. This makes it difficult for the public to easily access information on the program. The program's application forms are also not on the Internet where they would be more accessible to applicants.

**Recommendation 6**

**The Department of Health should better use its website about the Certificate of Need program to make more information and their applications available to the public. This information should include: (1) the application forms; (2) status reports on the program's activities; and (3) performance data for the program.**

<b>Legislation Required:</b>	None
<b>Fiscal Impact:</b>	JLARC assumes that this can be completed within existing resources.
<b>Reporting Date:</b>	December 2006

**AGENCY RESPONSES**

We have shared this report with the Department of Health and the Office of Financial Management and provided them with an opportunity to submit written comments. Their written responses are included in Appendix 2.

## ACKNOWLEDGEMENTS

We appreciate the assistance provided by Department of Health staff in conducting this study. In particular, we would like to thank the Certificate of Need program staff.

Ruta Fanning  
Legislative Auditor

On June 26, 2006, this report was approved for distribution by the Joint Legislative Audit and Review Committee.

Representative Ross Hunter  
Chair

# APPENDIX 1: SCOPE AND OBJECTIVES

## PERFORMANCE AUDIT OF THE CERTIFICATE OF NEED PROGRAM

### SCOPE AND OBJECTIVES

NOVEMBER 30, 2005



STATE OF WASHINGTON  
JOINT LEGISLATIVE AUDIT AND  
REVIEW COMMITTEE

#### STUDY TEAM

LISA JEREMIAH  
CYNTHIA L. FORLAND

#### LEGISLATIVE AUDITOR

RUTA FANNING

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Website: <http://jlarc.leg.wa.gov>  
e-mail: [neff.barbara@leg.wa.gov](mailto:neff.barbara@leg.wa.gov)

## MANDATE

Engrossed Second Substitute House Bill 1688 (2005) directs the Joint Legislative Audit and Review Committee (JLARC) to conduct a performance audit of the Department of Health's (DOH) administration and implementation of the Certificate of Need (CON) program. The same bill created a task force to study and prepare recommendations on improving and updating the state's CON program. The task force is to consider the results of JLARC's audit in developing its recommendations.

## BACKGROUND

In 1971, the Legislature created Washington's Certificate of Need program in response to growing medical costs. Legislators were concerned about how the number and location of health care facilities and services affects health care costs.

Statute requires a Certificate of Need from DOH for any of the following:

- Establishment of certain new health care facilities;
- Capacity increases for hospitals, hospice care centers, nursing homes, and kidney dialysis centers;
- Sale, purchase, or lease of hospitals;
- Replacement, bed banking, and capital expenditures exceeding specified amounts for nursing homes; and
- Provision of new specialized health services, such as open heart surgery or organ transplants.

In accordance with statute, DOH evaluates Certificate of Need applications based on the following criteria:

- There is public **need** for the project and the project will improve access to all residents in the area;
- The project is **financially feasible** and will not result in an unreasonable impact on health care costs;
- The project **fosters the containment of health care costs**; and
- The **structure and process of care** will promote safe and adequate care.

## STUDY SCOPE

As directed by the Legislature, JLARC will review the Department of Health's administration and implementation of the Certificate of Need program. This study will not include an analysis of the impact of the Certificate of Need program on overall health care costs.

## STUDY OBJECTIVES

In response to the legislative directive, the study will answer the following questions:

- (1) How does DOH evaluate Certificate of Need applications? Are decisions consistent with statutory criteria? What data and analysis does DOH use to make those decisions?
- (2) Are DOH's Certificate of Need decisions consistent with other applications of the same type?
- (3) How does DOH measure the performance of the Certificate of Need program?
- (4) How does DOH monitor approved Certificate of Need projects to ensure that the projects conform with the conditions of the Certificate of Need?

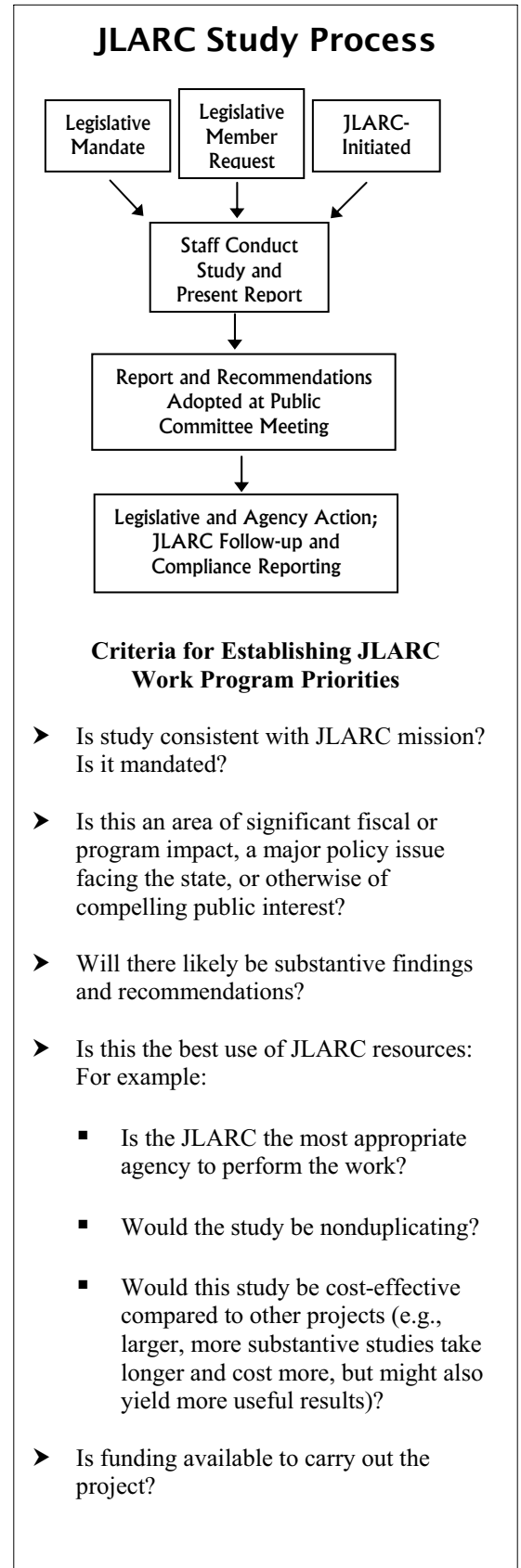
## TIMEFRAME FOR THE STUDY

Staff will present its preliminary report to JLARC in May 2006, and the proposed final report at the JLARC meeting in June 2006.

## JLARC STAFF CONTACT FOR THE STUDY

Cynthia L. Forland (360) 786-5178  
forland.cynthia@leg.wa.gov

Lisa Jeremiah (360) 786-5293  
jeremiah.lisa@leg.wa.gov





## APPENDIX 2: AGENCY RESPONSES

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- Department of Health
- Office of Financial Management

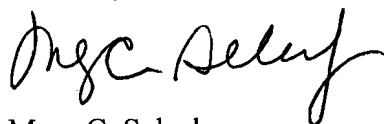




RECOMMENDATION	AGENCY POSITION	COMMENTS
Rec. 3	Concur	This recommendation is directed to the Legislature. We agree that uniform, correct information is important to fair, consistent and accurate decisions. ESSHB 1688 directs the task force to examine issues related to the information available to make decisions, and projections of need for future services; its recommendations will likely address this issue.
Rec. 4	Concur	We are creating a new work load tracking and analysis tool to assess program and staff performance in numerous areas, including consistency, timeliness and compliance with standards. The assistance of the JLARC auditors has been very valuable in this regard.
Rec. 5	Concur	We will establish an internal working group to develop monitoring criteria and techniques. We will verify compliance with basic conditions on CONs that are awarded by the end of 2006.
Rec. 6	Concur	We have updated our web site to include status reports and workload information that was previously distributed only on request. We have also placed most applications forms on the website, and expect to have all applications available on the web site by September 2006. We are now analyzing which additional documents, such as completed decisions or filed applications, should also be available on the web site.

I want to express our appreciation for a positive audit experience. The audit staff that worked with us made insightful and thoughtful observations in arriving at the recommendations.

Sincerely,



Mary C. Selecky  
Secretary

cc: Christina Hulet, Office of the Governor  
Nick Lutes, Office of the Governor  
Mark Rupp, Office of the Governor  
Gary Bennett, Department of Health  
Bart Eggen, Department of Health  
Laurie Jenkins, Department of Health  
Brian Peyton, Department of Health  
Bill White, Department of Health



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JUN 05 2006

JLARC

STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

May 30, 2006

TO: Ruta Fanning, Legislative Auditor  
Joint Legislative Audit and Review Committee

FROM: Victor A. Moore, Director *V.A. Moore*

SUBJECT: **PRELIMINARY REPORT - PERFORMANCE AUDIT OF THE  
CERTIFICATE OF NEED PROGRAM**

Thank you for giving the Office of Financial Management (OFM) the opportunity to review JLARC's preliminary report on the Performance Audit of the Certificate of Need Program.

OFM concurs with the recommendations in this preliminary report.

Recommendation	Agency Position	Comments
1. The Department of Health should identify strategies for meeting established statutory timelines for Certificate of Need applications.	Concur	
2. DOH should identify strategies to ensure that all statutory criteria for reviewing Certificate of Need applications are fully applied. The Department may also recommend amendments to statutory criteria if necessary to reflect the state's current health care system.	Concur	
3. The Legislature should consider establishing consistent basic reporting requirements for all services and facilities that are subject to Certificate of Need review so that information related to each type of application will be readily available and reliable.	Concur	
4. To ensure ongoing consistency in both the analysis and final decisions for Certificate of Need applications, DOH should perform regular and ongoing reviews of program staff's application reviews and issued decisions.	Concur	



5. DOH should revise its monitoring practices to include completed projects, as appropriate, to ensure applicants' compliance with issued Certificates of Need in accordance with statute.	Concur	
6. DOH should better use the Certificate of Need program's website to make more information and applications available to the public.	Concur	

We look forward to your final report. If you have any questions, please contact Nick Lutes at (360) 902-0570.

# APPENDIX 3: JLARC’S REVIEW OF CASE STUDY DECISIONS

The following table shows the 21 Certificate of Need decisions that JLARC reviewed as part of this study. We selected these applications by identifying eight common types of applications. For each of these types, we selected one application that had been denied. Then we selected one approved application that was similar to the denied application. We looked for similarities in the year decided and the project description when selecting case studies. If the Department of Health had not denied any applications of a certain type, such as hospital bed change capacity, then we selected two similar applications that had both been approved. We did not select any case study applications that were still being appealed because we needed all of the case study decisions to be finalized and settled to ensure a comparable analysis.

Certificate of Need Decisions Reviewed as Part of the JLARC Study

Name	Project Description	Final Decision	Location	Decision Date
<b>Hospitals - Bed Capacity Change</b>				
Children's Hospital and Regional Medical Center	Add 42 acute care beds to existing 208-bed facility for a total of 250 acute care beds	Approved	King County	2002
Kennewick General Hospital	Add 34 acute care beds to existing 71-bed facility for a total of 105 acute care beds	Approved	Benton and Franklin Counties	2002
<b>Hospitals - New Institutional or Tertiary Service</b>				
Evergreen Hospital Medical Center (Kirkland) and Overlake Hospital Medical Center (Bellevue)	Establish adult, regional open-heart surgery and percutaneous transluminal coronary angioplasty (PTCA) services at Evergreen Hospital	Denied	King County	2003
Harrison Memorial Hospital (Bremerton)	Establish adult, regional open-heart surgery and percutaneous transluminal coronary angioplasty (PTCA) services at Harrison Memorial Hospital	Approved With Conditions	Kitsap County	2001
Providence Everett Medical Center	Establish a neonatal intensive care unit and level III obstetric services within space at the hospital	Approved With Conditions	Island, San Juan, Skagit, Snohomish, and Whatcom Counties	2002
Overlake Hospital Medical Center	Establish a neonatal intensive care unit and level III obstetric services within space at hospital	Approved	King County	2002

Performance Audit of the Certificate of Need Program

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<b>Name</b>	<b>Project Description</b>	<b>Final Decision</b>	<b>Location</b>	<b>Decision Date</b>
<b>Nursing Homes</b>				
Christian Health Care Center	Add 22 beds to existing 120-bed skilled nursing home facility	Approved With Conditions	Whatcom County	2004
Regency Pacific Corporation	Add 33 beds to Sharon Care Center for a total of 75	Denied	Lewis County	2005
<b>Hospice</b>				
Klickitat County Public Hospital District No. 1	Establish Medicare-certified and Medicaid-eligible hospice agency	Approved	Klickitat County	2005
HCR Manor Care dba Heartland Home Health and Hospice	Establish Medicare-certified and Medicaid-eligible hospice services	Denied	King, Pierce, and Snohomish Counties	2005
<b>Home Health</b>				
Gentiva Health Services	Establish Medicare-certified and Medicaid-eligible home health agency	Denied	Cowlitz County	2005
Touchmark Living Centers, Inc.	Establish Medicare-certified and Medicaid-eligible home health agency to be named Touchmark Home Health	Approved With Conditions	Clark County	2004
<b>Ambulatory Surgical Centers</b>				
Kennewick General Hospital	Establish freestanding ambulatory surgical center at Kennewick General Hospital Medical Mall	Approved With Conditions	Benton and Franklin Counties	2002
Valley Orthopedic Associates, LLC	Establish freestanding ambulatory surgical center	Denied	Southeast King County	2002
Western Washington Endoscopy Centers, LLC	Establish freestanding ambulatory surgical center in Gig Harbor	Approved With Conditions	Pierce County	2004
Tacoma Digestive Disease Center	Establish freestanding ambulatory surgical center in Gig Harbor	Approved With Conditions	Pierce County	2004
Western Washington Endoscopy Centers, LLC	Establish freestanding ambulatory surgical center in Tacoma	Approved With Conditions	Pierce County	2004



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Name	Project Description	Final Decision	Location	Decision Date
<b>Kidney Dialysis – New Center</b>				
Deaconess Medical Center (Spokane)	Establish 8-station kidney dialysis facility	Denied	Spokane County	2000
Sacred Heart Medical Center	Establish 6-station kidney dialysis center in Omak	Approved With Conditions	Okanogan County	2000
<b>Kidney Dialysis – Increase in Number of Stations</b>				
Northwest Kidney Centers	Add 6 stations to Lake Washington Kidney Center for a total of 24 stations	Denied	King County	2003
DaVita, Inc. - Mid-Columbia Kidney Center	Add 7 stations to existing 15-station center	Approved With Conditions	Franklin County	2003





