

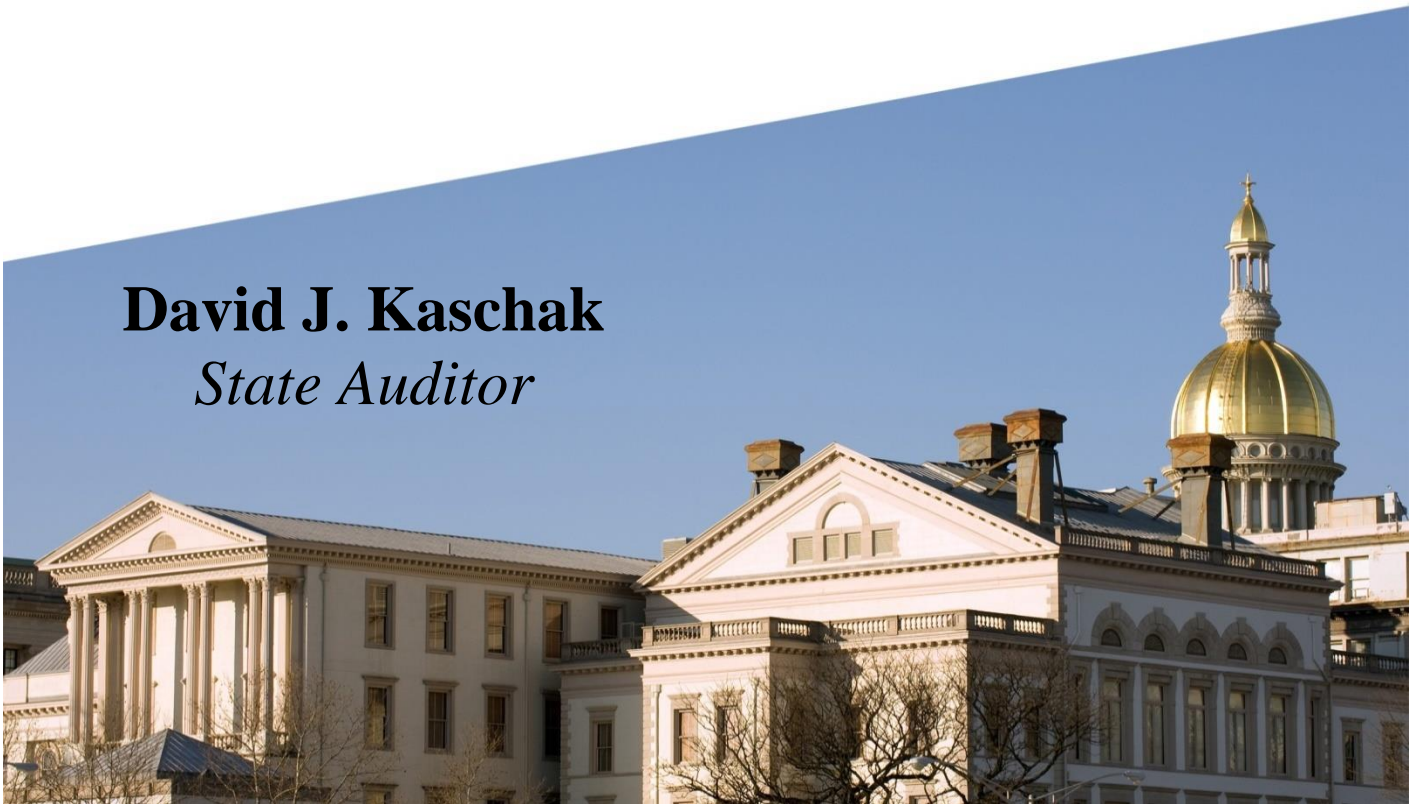


New Jersey Legislature
★ *Office of* LEGISLATIVE SERVICES ★
OFFICE OF THE STATE AUDITOR

Department of Health
Division of Certificate of Need and Licensing
Certificate of Need Program

July 1, 2021 to October 31, 2023

David J. Kaschak
State Auditor



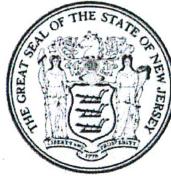
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The Honorable Craig J. Coughlin
Speaker of the General Assembly

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Enclosed is our report on the audit of the Department of Health, Division of Certificate of Need and Licensing, Certificate of Need Program for the period of July 1, 2021 to October 31, 2023. If you would like a personal briefing, please call me at (609) 847-3470.

A handwritten signature in cursive script that reads "David J. Kaschak".

David J. Kaschak
State Auditor
July 23, 2024

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Scope

We have completed an audit of the Department of Health (department), Division of Certificate of Need and Licensing (division), Certificate of Need Program (program) for the period July 1, 2021 to October 31, 2023. Our audit included financial activities accounted for in the state's General Fund. Certificate of Need is a regulatory process that governs the construction, relocation, or renovation of certain healthcare facilities. The program helps ensure the construction of new and the expansion of existing facilities meet the needs of the community while avoiding investment in duplicative facilities. During fiscal years 2022 through 2024 as of October 31, 2023, annual expenditures of the division were approximately \$424,500, \$427,800, and \$304,243, respectively. Annual revenues for the account designated for Certificate of Need during fiscal years 2022 through 2024 as of October 31, 2023 were approximately \$528,900, \$952,200, and \$143,550, respectively.

Objectives

The objectives of our audit were to determine whether financial transactions were related to the program, were reasonable, and were recorded properly in the accounting system. Additional objectives were to determine whether the division had proper controls in place over the program and whether the division complied with applicable state laws, regulations, and internal policies and procedures.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section I, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In preparation for our testing, we studied legislation, the administrative code, circulars promulgated by the Department of the Treasury, and internal policies of the division. Provisions we considered significant were documented, and compliance with those requirements was verified by interview, observation, and through our testing of financial transactions and finalized Certificate of Need applications. We also read the budget messages, reviewed financial trends, and interviewed department personnel to obtain an understanding of the program and the internal controls. Additionally, we reviewed the Memorandum of Agreements that both the department and division entered into with the New Jersey Health Care Facilities Financing Authority. In order to achieve our objectives, we performed various tests and analyses, as we determined necessary. Additional detail regarding our methodology and work performed can be found in the Appendix, as well as in the finding section when testing resulted in a reportable condition.

A nonstatistical sampling approach was used. Our samples of financial transactions and approved Certificate of Need applications were designed to provide conclusions on our audit objectives, as well as internal controls and compliance. Sample populations were sorted, and transactions were judgmentally selected for testing. Because we used a nonstatistical sampling approach for our tests, we cannot project the results to the respective populations.

Data Reliability

We relied on data from the New Jersey Comprehensive Financial System. Our office assesses the reliability of the system's data annually, and we have determined it to be sufficiently reliable for the purposes of this report.

Certain other data in our report were used to provide background information. Data that we used for this purpose were obtained from the best available sources. *Government Auditing Standards* do not require us to complete a data reliability assessment for data used for this purpose.

Conclusions

We found the financial transactions included in our testing were related to the program, were reasonable; however, some revenue transactions were not always recorded properly in the accounting system. In making these determinations, we noted weaknesses in internal controls over the division's processing of application filing fees and adherence to the administrative code during the application review process. In addition, we determined the division does not have official standard operating policies and procedures.

Background

Certificate of Need laws for New Jersey were inaugurated under N.J.S.A. 26:2H (Health Care Facilities Planning Act of 1971). The law established the Certificate of Need program that would require providers to petition for state approval before the construction, expansion, or closure of certain healthcare facilities, services, or equipment projects. The department may include limiting the expansion of certain healthcare services to preserve the viability of existing providers and hospitals and determine the viability of closing important institutions and the transfer of services from facilities in a manner that best serves the public. The Certificate of Need application and review process is governed under N.J.A.C. 8:33, and the program is administered by the Department of Health, Division of Certificate of Need and Licensing.

There are two types of applications for a Certificate of Need. A full Certificate of Need application review process is extensive and requires a recommendation by the State Health Planning Board, which functions as an advisory panel to the Commissioner of Health. Examples of Certificate of Need application types that require a full review include a voluntary closure or transfer of ownership of a general hospital. The establishment of or increase in the capacity of assisted living residences, extension of time to an unimplemented Certificate of Need, and relocation of an entire licensed healthcare facility within the same planning region are the types

of applications eligible for expedited review.

Application Review Process – Track Record

N.J.A.C. 8:33-4.10 requires each applicant for a Certificate of Need to demonstrate character and competence, quality of care, and an acceptable track record of past and current compliance with state licensure requirements. Applicants are required to submit supplemental information to demonstrate the above, along with their completed application. The department is to examine and evaluate the licensing track record of each applicant for the period beginning 12 months preceding the submission of the application and extending to the date the application is approved. If any facility has been cited for a licensing violation that presented a serious risk to the life, safety, or quality of care to the facility's residents or the applicant's criminal history identifies a disqualifying offense delineated in the administrative code, the application shall be denied.

In accordance with N.J.A.C. 8:33-4.10(d)2(i), an applicant must provide evidence of their capacity to provide quality of care that meets or exceeds licensure standards for healthcare facilities that are owned, operated, or managed, in whole or in part, by the applicant. Those healthcare facilities include facilities located in New Jersey, as well as other similar facilities in other states that are owned, operated, or managed, in whole or in part, by the applicant. Applicants are required to identify all in-state and out-of-state related facilities by name and address. Applicants with related facilities in other states must also include a written report from the applicant's licensing agencies in all other applicable states. If the applicant is unable to provide a written report, the applicant may submit an attestation form stating that its compliance record in all applicable states does not contain any disqualifying violations, along with documentation of their efforts to obtain a written report. Applicants must also include with their application a track record chart identifying facilities with any significant compliance issues that presented a serious risk to the life, safety, or quality of care of residents or patients.

To review an applicant's in-state track record, the division's analysts access the Centers for Medicare and Medicaid Services (CMS) Automated Survey Process Environment (ASPEN) Information Technology System. States are required to upload their facility survey reports, statements of deficiencies, and plans of corrections to the ASPEN system. However, the division is not able to use ASPEN for out-of-state reviews, as CMS restricts the division's access to only New Jersey provider data.

Compliance with the Administrative Code

The division is not enforcing compliance with the administrative code when approving Certificate of Need applications.

There were 15 Certificate of Need applications filed and approved between July 1, 2021 and August 30, 2023. Based on review process type and application type, we judgmentally selected seven applications to determine if the applicant submitted all information required by the administrative code and the division. Three applicants only had in-state facilities, and we found no exceptions with those applications. However, we found exceptions with the four applications where the applicant also had facilities in other states. In lieu of written reports from the other states' licensing agencies, the four applicants provided attestation forms, as permitted by the administrative code. However, none of the four provided documentation of their efforts to obtain a written report from those licensing agencies, as required by the code.

We determined the division does not have any official standard operating policies and procedures over the Certificate of Need application review process, including the track record review. The only existing written policies are documents created by a division employee that have not been officially approved by the department as a standard. Approved written procedures are necessary to maintain operational consistency and provide employees with instructions that ensure compliance with state regulations.

We also noted the division does not require its analysts to document their work performed when evaluating an applicant's track record. Therefore, there was no prior documentation maintained that supported the number of facilities related with the seven applicants we reviewed. Documentation is necessary to verify the accuracy and completeness of the work performed. In addition, the division informed us it relies on documentation provided by the applicant and does not independently verify the information. This increases the risk that the applicant has not provided all evidence demonstrating their capacity to provide a high level of care to their residents and operate a healthcare facility in a safe and effective manner.

Recommendation

We recommend the division enforce compliance with the administrative code. This includes requiring applicants to submit documentation supporting their efforts to obtain a written report from licensing agencies for related facilities in other states. In order to ensure consistency, we further recommend the department develop and approve standard operating procedures governing the Certificate of Need application review process, including track record review. In addition, we recommend the division require its analysts to document the work performed when evaluating an applicant's track record.



Criminal History Background Checks

Criminal history background checks are not performed during the Certificate of Need application review process.

During its evaluation of the applicant's licensing track record, pursuant to N.J.A.C. 8:33-4.10(d)3, a Certificate of Need application may be denied when an applicant's criminal history identifies "the existence of a criminal conviction or a plea of guilty to a charge of fraud, patient or resident abuse or neglect, or a crime of violence or moral turpitude." We found criminal history background checks are not performed during the Certificate of Need application review process. According to the division, a criminal history review will be conducted during the facility licensure process. However, N.J.A.C. 8:43E-5.1 indicates the applicant's track record is to be reviewed during the Certificate of Need application process.

We determined the licensing unit does not perform criminal history background checks, but rather it accepts an applicant's signed attestation stating that they have not been indicted or found guilty of any disqualifying offenses. A Certificate of Need indicates a provider has been approved to construct, expand, or close a healthcare facility or service, while the subsequent licensure allows a provider to operate the healthcare facility. When criminal history background checks are not completed during the application review process, the division cannot determine if an applicant has a disqualifying record that may result in the application being denied.

Recommendation

We recommend the department require criminal history background checks of applicants during the Certificate of Need application review process. If legislative or administrative code changes are necessary, the department should pursue such changes.



Track Record Review

The division does not perform track record reviews when applicants request an extension of time to an unimplemented Certificate of Need application.

A Certificate of Need is valid for a period of five years from the date of approval or as specifically identified in a call for Certificate of Need applications. If the applicant anticipates the healthcare facility will not be licensed before the expiration date, the applicant may apply for an extension of time to an unimplemented Certificate of Need, which is defined in the administrative code as a Certificate of Need that has not been licensed by the division within five years after the date of approval by the department. N.J.A.C. 8:33-5.1 states that an expedited review process shall be used for an extension of time for an unimplemented Certificate of Need application. An expedited review, when track record violations are known, requires the division to address the violations with the applicant.

During our review of 7 of 15 approved Certificate of Need applications, we identified one application for an extension of time where the applicant completed the following:

- submitted a list of all related healthcare facilities
- signed the division’s attestation form
- identified seven total healthcare facilities with significant compliance issues on their track record chart within the year preceding the extension of time application submission

The original Certificate of Need was approved on December 14, 2016 to construct a new assisted living facility with an expiration date of December 14, 2021. The applicant was not licensed by the division before the Certificate of Need expired, and the applicant filed for an extension of time on July 1, 2022, which was granted on August 16, 2022.

When we requested from the division the applicant’s evidence addressing the significant track record violations for the seven related healthcare facilities, the division stated a track record review was not required to approve an extension of time application. Therefore, the division approved the extension of time application without addressing any of the violations with the applicant. The division states that a review of a licensure track record is only necessary when applicants are applying for services and not an extension of time. The division refers to N.J.A.C. 8:33-5.3, which states that applicants for services proposed for expedited review shall document licensure track record requirements. The division’s interpretation is that an application for an extension of time is not an application for “services” and a track record review is not required. Therefore, the division did not address the known violations of the applicant.

Performing a track record review for an extension of time for an unimplemented Certificate of Need allows the division to identify and determine whether new violations have occurred since the original Certificate of Need was approved.

Recommendation

We recommend the division perform a track record review for applicants that file for an extension of time.



Timeliness of the Application Review Process

The division is not completing the application process within the required timeframes, and the department is not completing annual reviews.

According to N.J.A.C. 8:33-4.1, a full review of a Certificate of Need application must be completed within 210 days from the filing date, and an expedited review must be completed

within 90 days. The filing date is recorded as the first business day of the following month after the division determines the application is ready for review. In certain situations, supplemental or clarification information is required during a review of the application. This is accomplished by the division sending an applicant a “Completeness Questions” letter which requires the applicant to respond within 10 business days. Multiple rounds of letters could be sent to an applicant, if necessary. When Certificate of Need applications are not finalized within regulatory requirements, the construction of a new facility, expansion of an existing facility, or addition of supplemental services could be delayed.

We reviewed all 15 Certificate of Need applications approved from July 1, 2021 through August 31, 2023 to determine if the division was in compliance with the administrative code. Of the four applications that required a full review, no exceptions were noted, with the average timeframe for each application being 145 business days. The remaining 11 applications required an expedited review, and we noted 9 were not reviewed by the division within the required 90 days. The exceptions ranged from 166 to 260 total business days to review, with an average timeframe of 213 business days. Our review considered whether the “Completeness Questions” letters and applicant response times significantly contributed to the division’s inability to complete expedited reviews in the required timeframe; we determined they did not, as the applicants responded in a reasonable number of days.

In addition, the administrative code requires the department to conduct an annual review of the department’s ability to process Certificate of Need applications in accordance with the regulatory requirements. Any exceptions to the acceptable timeframes are to result in immediate corrective action. We found no documentation indicating annual reviews are completed in order to determine whether the division is processing at least 90 percent of applications within the required timeframes.

Recommendation

We recommend the department perform annual reviews and document its efforts to identify applications that are noncompliant with the timeframe requirements and develop corrective action procedures to ensure compliance with the administrative code.



Revenue – Application Filing Fees

Application filing fees totaling \$861,773 were not posted to the correct revenue account.

The division is responsible for depositing checks received for Certificate of Need application filing fees and recording the checks on a deposit log. Employees complete a preliminary deposit slip and Cash Receipt Transaction (transmittal) document, which identifies the revenue account to which the check should be posted. The deposit log and transmittal are forwarded to the department’s Division of Health Facility Survey and Field Operations fiscal unit (fiscal unit),

which reviews the deposit log to ensure revenue is posted to the correct revenue account. If the preliminary transmittal is accurate, it will become the final transmittal; however, if errors are detected by the fiscal unit, corrections should be marked on the transmittal. Once the transmittal is finalized, the fiscal unit posts the transaction to NJCFS and records the transaction in a revenue log.

The division's annual budget for the program consists of anticipated revenue based on estimates, and unexpended fund balances carry forward to the following fiscal year. Failure to properly record revenue prevents the department from accurately determining if revenues are sufficient to cover the costs of the program and if unexpended amounts should be appropriately carried forward to the next fiscal year. The department has not established written standard operating procedures over the Certificate of Need application filing fee process. Written procedures are necessary to ensure operational consistency and to provide employees with instructions on how to comply with state regulations.

We judgmentally selected a sample of 10 revenue transactions totaling \$624,944 for testing based on payment type and dollar amount. Our population included 80 transactions for the period July 2021 through October 2023 totaling \$2.5 million. Our sample included eight check payments totaling \$478,503 and two electronic payments totaling \$146,441. We found 5 of the 10 transactions totaling \$347,000 were not posted to the revenue account designated for Certificate of Need application filing fees. All five exceptions were application filing fees paid by check.

Because of the high error rate, we tested the remaining 70 revenue transactions totaling \$1,885,630 during the audit period and noted 29 (41 percent) totaling \$514,773 were not posted to the correct revenue account. All 34 exceptions, totaling \$861,773, were due to human error and the lack of standard operating procedures.

We found one applicant's filing fee totaling \$32,500 was not collected before the division began its review of the Certificate of Need application. The division received notice that the applicant's fee was paid in January 2023, but the fiscal unit failed to notify the division that the payment was rejected the following day. Therefore, the division started the review process and continued until we notified the division of the non-payment. The fee was finally collected in March 2024.

The Department of the Treasury created an EFT code unique for each specific Department of Health program to identify the revenue account the payment is to be recorded in. Transactions are uploaded into the applicable Department of Health EFT database and posted to the applicable revenue account. The department does not perform an end-of-year reconciliation of the database to determine if EFT payments are being applied to the correct programs.

During the period July 2021 through October 2023, there were a total of 60 payments amounting to \$1,423,842 posted to the EFT 14260 database designated for Certificate of Need application filing fee electronic payments. Of the 60 EFT payments, we found 25 (42 percent) totaling \$157,196 were not related to the program.

Recommendation

We recommend the department create written standard operating procedures regarding the Certificate of Need application filing fee process. The procedures should include the revenue account program payments are to be posted to. Additionally, the division should collect filing fees before beginning a review of an application. Also, the division should perform a reconciliation of the EFT database to ensure payments are posted correctly.



Appendix

Methodologies to Achieve Audit Objectives

To determine if expenditure transactions were related to the division, were reasonable, and recorded properly in the accounting systems, we judgmentally selected five transactions totaling \$29,400 based on transaction type, object code, and dollar amount. Our population included 50 transactions for fiscal years 2022 through 2024 as of October 31, 2023 totaling \$830,272.

To determine if reimbursements were in compliance with the Memorandum of Agreement between the department and the New Jersey Health Care Facilities Financing Authority for fiscal monitoring, we reviewed quarterly invoices from fiscal years 2022 through 2024 as of September 30, 2023 totaling \$12,870.

To determine if reimbursements were in compliance with the Memorandum of Agreement for architectural reviews between the department and the New Jersey Health Care Facilities Financing Authority, we analyzed quarterly invoices from fiscal years 2022 through 2024 as of June 30, 2023 totaling \$108,186.





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Commissioner

July 18, 2024

David J. Kaschak
State Auditor
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125 South Warren St.
P.O. Box 067
Trenton, NJ 08625-0067

Re: Audit Report,
Certificate of Need and Licensing Program,
Department of Health

Dear Mr. Kaschak:

Please accept this letter in response to the draft audit report of the Certificate of Need and Licensing Program (CN&L) in the Department of Health (DOH) for the period of July 1, 2021, to October 31, 2023. CN&L continually strives to improve its functions and programs and appreciates the feedback on its operations and opportunity for improvement.

Recommendation:

We recommend the division enforce compliance with the administrative code. This includes requiring applicants to submit documentation supporting their efforts to obtain a written report from licensing agencies for related facilities in other states. In order to ensure consistency, we further recommend the department develop and approve standard operating procedures governing the Certificate of Need application review process, including track record review. In addition, we recommend the division require its analysts to document the work performed when evaluating an applicant's track record.

Response:

The Division has an informal process for the review of certificate of need applications. This process will be formalized by establishing standard operating procedures (SOP). The SOP will include a check list for analysts to document the completion of track record reviews. The SOP will also include a requirement for applicants to submit documentation that out of state Survey Agencies were contacted to obtain track record information.

Recommendation:

We recommend the department perform criminal history background checks of applicants during the Certificate of Need application review process. If legislative or administrative code changes are necessary, the department should pursue such changes.

Response:

Criminal background checks through the Federal Bureau of Investigation or the New Jersey State Police require explicit statutory authority. The Department currently has license with CLEAR, which provides access to search public criminal histories. CN&L has obtained two licenses which will allow Program Managers and team leaders to conduct searches on applicants.

Recommendation:

We recommend the division perform a track record review for applicants that file for an extension of time.

Response:

CN&L will undertake an amendment to the administrative rules governing certificate of need extensions of time. The track record review process occurs during the certificate of need or expedited certificate of need application review process and again during the licensure application process. Conducting a third track record review during solely an extension of time does not provide benefit to the Division. Extensions of time are only granted when an already approved certificate of need requires additional time for completion. When the project is complete, the applicant submits the licensure application, and the second track record review is conducted prior to the applicant receiving a license from the Department.

Recommendation:

We recommend the department perform annual reviews and document its efforts to identify applications that are noncompliant with the timeframe requirements and develop corrective action procedures to ensure compliance with the administrative code.

Response:

Currently, team leaders conduct weekly one on one meetings with analysts. Analysts will be required to update the "Notes" section for each application in the internal CN&L tracking system known as Dynamics. The use of the Notes section creates a timeline for team leaders and analysts to reference to track adherence to relevant timeframes. CN&L will institute a quarterly review of certificate of need and expedited review certificate of need applications to ensure the required time frames are followed.

Recommendation:

We recommend the department create written standard operating procedures regarding the Certificate of Need application filing fee process. The procedures should include the revenue account program payments are to be posted to. Additionally, the division should collect filing

fees before beginning a review of an application. Also, the division should perform a reconciliation of the EFT database to ensure payments are posted correctly.

Response:

The Division has an informal process for the review of certificate of need application filing fees. This process will be formalized by establishing standard operating procedures (SOP). The SOP will include the revenue accounts to which the payments are to be posted. The SOP will also include the requirement that payment will be received before analysts begin work on the application. The requirement to confirm payment has been received will be added to the analyst check list. The SOP will include a monthly reconciliation of the EFT database to ensure payments are posted correctly.

Please let me know if you have any additional questions regarding this response.

Sincerely,



Stefanie Mozgai
Assistant Commissioner
Division of Certificate of Need & Licensing
New Jersey Department of Health

C: Kaitlan Baston, DOH
Jeff Brown, DOH
Michael Kennedy, DOH