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**Adam Mather**  
INSPECTOR GENERAL

**TO:** Certificate of Need Task Force

**FROM:** Adam Mather, Inspector General

**DATE:** July 11, 2023

**RE:** Requested Certificate of Need (CON) information

At the last CON Task Force meeting on June 19th, members of the task force requested the following information:

- The number of CON applications received, the percentage not approved, and the reasons they were not approved;
- The number of CON applications rejected and which statutory criteria the rejection is based on; and
- The process by which hearing officers are selected to hear CON cases.

Cabinet staff reviewed information contained in the CON database for the period January 1, 2015 through July 1, 2023 and compiled information for every CON decision issued during that period. A summary of the information is set out below:

- 786 CON applications were received between January 1, 2015 and July 1, 2023.
- Of those 786 applications:
  - 98 applications were withdrawn
  - 58 were for services that did not require a CON
    - HB 444 enacted in 2018 removed the need for CON approval for several types of health services, so there were many applications pending at the time that bill took effect.
  - 32 remain pending
  - 589 were considered and decisions were issued
    - 540 (91.7%) were approved
    - 40 (6.8%) were not approved
    - 9 (1.5%) are missing data

For the 40 applications there were not approved, cabinet staff reviewed and compiled the type of health services the applicant sought to provide and the cited reasons the applications were not approved. Set out below are the types of health services and the number of applications to provide that service that were denied during the period January 1, 2015 through July 1, 2023:

- Mobile health service – to provide specialized home infusion - 1
- Home health services – 16
- Class VI ALS ground ambulance service – 3
- ALS/BLS ground ambulance service – 8
- Adult day health program – 3
- Ambulatory surgical center – 4
- Private duty nursing Service – 1
- Fixed site diagnostic cardiac catheterization - 1
- Chemical dependency treatment facility – 1
- Radiation therapy service – 1
- Adult psychiatric program – 1

Regarding the reasons applications were not approved, KRS 216B.040(2)(a)2. establishes the five criteria used to evaluate a CON application. Set out below are the five statutory criteria and the number and percentage of denials that cited each criterion. Please note that denial decisions usually cite inconsistency with more than one criterion, so the percentages listed will not total 100%.

1. Consistency with the State Health Plan – 18 denials (45%)
2. Need and accessibility – 26 denials (65%)
3. Interrelationships and linkages – 12 denials (30%)
4. Costs, economic feasibility, and resource availability – 18 denials (45%)
5. Quality of care – 13 denials (33%)

In response to the question regarding the selection of hearing officers, the hearing officers employed by the cabinet are experienced attorneys trained and certified in KRS Chapter 13B's requirements for administrative hearings. CON cases, like other cases handled by the cabinet's hearing officers, are assigned in rotation but with consideration of the hearing officer's existing caseload and any potential conflict of interest. If a hearing officer has any type of professional or personal relationship with a party to the matter or with a law firm representing a party, a different hearing officer is assigned to hear the case.