

Denial of application for certificate of need was unreasonable without an accompanying written decision evaluating specific criteria. *Tri-Med v. State Health Planning Board*, 95 N.J.A.R.2d (HLT) 22.

Denial of medical center's application for certificate of need could not be reviewed for reasonableness in absence of a specific articulation in record of reasons for denial. In *Re Hunterdon Application*, 95 N.J.A.R.2d (HLT) 11.

Appeal from denial of certificate of need; reimbursement for construction costs which exceeded the approved project cost denied as untimely; denial of reimbursement for petitioner's interest amortization rate. *Hillcrest Manor v. Dep't of Human Services*, 9 N.J.A.R. 45 (1983).

**8:33-4.15 Procedures for Commissioner of Health review**

(a) The Commissioner may approve or deny an application for a certificate of need upon consideration of the State Health Plan and if the approval or denial is consistent with all applicable health planning rules. The Commissioner shall issue a written decision on his or her determination of a certificate of need application which shall specify the reasons for approval or disapproval. The decision will be sent to the applicant, to the appropriate local advisory board and to the State Health Planning Board, and shall be available to others upon request.



(b) Pursuant to N.J.S.A. 26:2H-9, if the Commissioner recommends denial of a certificate of need application, the applicant shall be granted an opportunity for fair hearing to contest the Commissioner's action. Further, no decision shall be made by the Commissioner contrary to the recommendations of the State Health Planning Board or the Local Advisory Board on the disposition of a certificate of need application unless the State Health Planning Board and the applicant shall be granted an opportunity for a hearing.

(c) A request for a fair hearing shall be made to the Department within 30 days of receipt of notification of the Commissioner's decision. The fair hearing shall be conducted according to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the record shall be limited to the documentary evidence presented to the reviewing agencies below. The Health Care Administration Board, within 30 days of receiving all appropriate hearing records, or, in the absence of a request for a hearing within 30 days of receiving the denial recommendations of the Commissioner, shall make its determination.

(d) After the commencement of a fair hearing pursuant to (c) above, and before a decision is made, there shall be no ex parte contacts between any person acting on behalf of the applicant or holder of a certificate of need, or any person opposed to the issuance of a certificate of need, and any person in the Department who exercises any responsibility for reviewing the application. Ex parte communication is defined as an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given. It shall not include requests for status reports on any matter or proceeding. Any communications made after commencement of the fair hearing that are placed in the record of the proceedings are made available to all parties are not ex parte and are not prohibited.

(e) The determination of the Health Care Administration Board is the final decision of the Department where the Commissioner has recommended denial of a project application or where his or her decision to approve is contrary to the recommendation of the State Health Planning Board or the Local Advisory Board and a fair hearing is requested and held.

(f) The Department shall notify, upon their request, providers of health services and other persons subject to certificate of need requirements of the status of the review of certificate of need applications, findings made in the course of such review, and other information respecting such review after the certificate of need is deemed complete for processing.

(g) If the Department determines that the holder of an approved certificate is not making a good faith effort to implement the project, the Commissioner may null and void the certificate. Prior to such a determination, the Department

must notify the holder of the certificate of its intent to initiate the nullification process. The holder of the Certificate shall have 30 days from the date of such notice to submit written documentation of the substantial progress which has been made, and which will continue, in implementing the Certificate. If, after the review of the documentation submitted, a notice of nullification is nevertheless issued, the holder may request a hearing pursuant to (c) above.

#### Case Notes

Commissioner of Health's conclusory determinations were not sufficient to show that certificate of need was properly granted. In re Valley Hosp., 240 N.J.Super. 301, 573 A.2d 203 (A.D.1990), certification denied 126 N.J. 318, 598 A.2d 879.

#### 8:33-4.16 Conditions on approval/monitoring

(a) Conditions may be placed on certificate of need approval by the Commissioner if they relate to material presented in the application itself, are prescribed in State rules, relate to the criteria specified in N.J.A.C. 8:33-4.9 and 4.10 or promote the intent of the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., as amended. The State Health Planning Board and local advisory board shall not recommend the inclusion of conditions in a certificate of need approval which are not consistent with the provisions of this subchapter.

(b) Any conditions placed on a certificate of need approval shall become part of the licensure requirements of the approved facility. Failure to comply with approved certificate of need conditions may result in licensure action by the Department and may constitute an adequate basis for denying certificate of need applications by an applicant who is out of compliance with conditions on previous approvals. The applicant must contest any condition, if at all, within 30 days of receipt of notice. The applicant will vacate his right to oppose said condition(s) if he fails to submit written notice that he contests any condition to the Department within this time. If the applicant contests a condition, the Commissioner will suspend his or her approval of the certificate of need in order to consider the objection. Furthermore, the Commissioner has the right to nullify the approval of the certificate of need. The Commissioner may, at his or her discretion, consult with the State Health Planning Board to obtain its recommendation on the contested condition(s).

(c) When conditions are included in the Commissioner's approval letter, the applicant shall file a progress report on meeting such conditions with the Certificate of Need Program at least 12 months from the date of approval and annually for the first two years after project implementation and at any other time requested by the Department in writing. Failure to file such reports may result in the nullification of the approved certificate of need, fines and penalties imposed through licensure action and/or taken

into consideration in the review of subsequent certificate of need applications.

(d) Where an applicant has failed to meet conditions of approval of previously approved certificates of need, it may form an adequate basis for the Department to bar the applicant from filing any subsequent certificate of need until the conditions in question are satisfied.

Amended by R.1993 d.442, effective September 7, 1993.  
See: 25 N.J.R. 2171(a), 25 N.J.R. 4129(a).

## SUBCHAPTER 5. EXPEDITED REVIEW PROCESS

### 8:33-5.1 Statement of purpose

(a) The expedited review process shall be used for the following specific applications:

1. Establishment of a residential health care facility;
2. Establishment of a Statewide restricted admissions facility or change in bed capacity of a Statewide restricted admissions facility;
3. Change in cost to an approved certificate of need;
4. Establishment of or changes in the capacity of comprehensive personal care homes, in accordance with the requirements of this chapter and the Department's licensing rules;
5. Establishment of an obstetric service by a general acute care hospital or changes in the obstetric bed capacity of a general acute care hospital in excess of the exception criteria at N.J.A.C. 8:33-3.4 and 6.1;
6. Establishment of a pediatric service by a general acute care hospital or changes in the pediatric bed capacity of a general acute care hospital in excess of the exception criteria at N.J.A.C. 8:33-3.4 and 6.1. This provision does not apply to pediatric intensive or critical care beds and/or services;
7. Establishment of a birth center;
8. Establishment of or changes in the capacity of medical/surgical beds dedicated as a medical detoxification program by a general acute care hospital;
9. Establishment of or changes in the capacity of an alcohol residential treatment facility;
10. Establishment of or changes in the capacity of a drug free residential treatment facility;
11. Establishment of a comprehensive outpatient rehabilitation facility;

12. Establishment of or additions to an ambulatory surgery facility or operating room capacity dedicated to ambulatory surgical or same day surgical cases, except as provided for at N.J.A.C. 8:33-6.1(d);

13. Establishment of an acute hemodialysis service by a licensed general acute care hospital;

14. Acquisition by a general acute care hospital of megavoltage radiation oncology equipment that is already in operation in the State of New Jersey by another health care provider or entity, that is, currently providing radiation oncology services to patients in New Jersey;

15. Acquisition of magnetic resonance imaging/nuclear magnetic resonance equipment;

16. Acquisition of hyperbaric chamber equipment;

17. Establishment of an ambulatory care facility or provision of an ambulatory care service, except that an ambulatory care facility or service that is the subject of a health planning regulation shall follow the full review process in accordance with N.J.A.C. 8:33-4.1(a);

18. Establishment of a low risk pilot catheterization program as defined at N.J.A.C. 8:33E. Applications will be accepted by the Department in accordance with a one-time only filing deadline as established by the Commissioner.

19. Replacement of major moveable equipment which exceeds the dollar thresholds at N.J.A.C. 8:33-6.1(b) and (c);

20. Establishment of or changes in the capacity of assisted living residences; and

21. Establishment of or changes in the capacity of alternative family care programs.

(b) The expedited review process may also be used in lieu of the full review process, as noted in these rules, or in the following limited situations:

1. Emergency situations which demand rapid action; or
2. When the project has minimal impact on the health care system as a whole.

Amended by R.1993 d.442, effective September 7, 1993.  
See: 25 N.J.R. 2171(a), 25 N.J.R. 4129(a).  
Amended by R.1996 d.101, effective February 20, 1996.  
See: 27 N.J.R. 4179(a), 28 N.J.R. 1228(a).

### 8:33-5.2 Process

(a) The expedited review process will include 12 review cycles. The beginning of each cycle shall be the first day of each month and a decision shall be rendered by the Commissioner no later than three months after the application is deemed complete for processing.