

3. The Certificate of Need application complies with all other applicable requirements in this chapter.

(g) The conversion of specialized care beds to general long-term care beds or to another specialized care use may be considered for approval, provided that the following conditions are met:

1. The applicant provides evidence, to the satisfaction of the Department of Health, that good faith efforts have been made to implement the existing specialized care unit as it was originally approved, for a period of at least 18 months prior to submission of the Certificate of Need application for conversion. Evidence shall include:

- i. Records of efforts to establish appropriate referral sources and transfer agreements;
- ii. Records of efforts to negotiate reimbursement rates with third party payors including Medicaid; and
- iii. Without disclosing names or otherwise publicly divulging individuals' identities, a verifiable listing of all patients referred for admission over the 12 month period prior to application submission. The listing shall include each patient's age, medical diagnoses, county of residence, payment source, and clinical care needs. For each patient, the applicant shall indicate whether the patient was admitted to the special care unit, and if not, the reason why admission was denied and the name of the facility where the patient was finally placed; and
- iv. A description of all efforts to recruit and train staff for the unit.

(h) A Certificate of Need application proposing the conversion of acute care hospital beds to general or specialized long-term care beds may be approved provided that the following conditions are met:

1. The county in which the hospital is located has a documented nursing home bed need in accordance with N.J.A.C. 8:33H-1.4(g) and consistent with the county Long-Term Care Committee's placement mix proposal.
2. The project entails a permanent conversion of beds located on one or more distinct nursing units (that is the creation of so-called "swing beds" shall not be approved);
3. The applicant documents plans for providing a suitable, home like living environment for long-stay patients or agrees to adopt admission policies limiting utilization of the proposed long-term care beds to patients whose stays can reasonably be expected to be less than 100 days;
4. The capital cost of converting the acute care beds is less than that of new nursing facility construction; and
5. The Certificate of Need application complies with all other applicable requirements in this chapter.

Amended by R.1993 d.671, effective December 20, 1993.
See: 25 N.J.R. 3719(a), 25 N.J.R. 6031(a).

Case Notes

Nursing home operator was entitled to use variance for construction of congregate care housing facility adjunctive to nursing home, even though facility was to be run for profit. *Jayber, Inc. v. Municipal Council of Tp. of West Orange*, 238 N.J.Super. 165, 569 A.2d 304 (A.D.1990), certification denied 122 N.J. 142, 584 A.2d 214, certification denied 122 N.J. 142, 584 A.2d 215.

8:33H-1.14 Quality of care and licensure track record requirements for long-term care, assisted living residences, comprehensive personal care homes, and residential health care facilities

(a) The licensure "track record" of an applicant shall be evaluated by the Department to determine whether the applicant's proposed project may be approved. For this purpose, the following information shall be required:

1. Regarding the proposed ownership of the facility, the application shall identify each and every principal involved in the application, along with the percentage of each principal's interest. One hundred percent of the ownership of the proposed project shall be accounted for in the Certificate of Need application. If the applicant is a corporation, every investor with any amount of operational control over the proposed facility and every stockholder with 10 percent or more interest in the corporation shall be identified.

(b) Applicants shall demonstrate the capacity to provide a quality of care which meets or surpasses the requirements contained in the applicable licensing standards for the facility. Evidence of the capacity to provide high quality care shall include (b)1 below, and may also include (b)2 through 4 below:

1. A satisfactory record of compliance with licensure standards in existing health care facilities which are owned, operated, or managed, in whole or in part, by the applicant. This shall include reports issued by licensing agencies from other states, as well as from the Department;
2. Narrative descriptions or listings within the application of services, staffing patterns, policies and protocols addressing delivery of nursing, medical, pharmacy, dietary, and other services affecting residents' quality of care;
3. Documentation of compliance with the standards of accreditation of nationally-recognized professional bodies in fields pertaining to long-term care; and
4. A recommendation by the State Department of Human Services' Division of Medical Assistance and Health Services and Division of Mental Health and Hospitals regarding the quality of and access to services provided by the applicant to Medicaid patients and patients who have been discharged from State and county psychiatric hospitals.

(c) The Department shall examine and evaluate the licensing track record of each applicant for the period beginning 12 months preceding submission of the Certificate of Need extending to the date the Commissioner issues a final decision, for the purpose of determining the capacity of an applicant to operate a health care facility in a safe and effective manner in accordance with State and Federal requirements. A Certificate of Need application may be denied or, in a competitive batching review, afforded no prioritization and provided by N.J.A.C. 8:33H-1.19, where an applicant has not demonstrated such capacity, by evidence of continuing or serious violations of State licensing standards or Federal certification standards. An applicant, for purposes of this rule, includes any person who was or is an owner or principal of a licensed health care facility, or who has managed, operated, or owned in whole or in part any health care facility.

(d) A Certificate of Need submitted by an applicant who was cited for State licensing or Federal certification deficiencies during the period identified in (c) above, which presented a serious risk to the life, safety, or quality of care of the facility's patients or residents, shall be denied. A serious risk to life, safety, or quality of care of patients or residents includes, but is not limited to, deficiencies in State licensure or Federal certification requirements in the area of nursing, patient rights, patient assessment of care plan, dietary services, infection control and sanitation, or pharmacy, resulting in:

1. An action by a State or Federal agency to curtail or temporarily suspend admissions to a facility; or
2. Issuance of two or more Federal Level A deficiencies in the areas identified above; or
3. Issuance of one or more Federal Level A deficiencies in the same area on two or more consecutive visits.

(e) In evaluating track record, the Department may consider any evidence of noncompliance with applicable licensure and certification requirements provided by an official state licensing and/or certification agency in any state outside of New Jersey, or any official records from any agency of the State of New Jersey indicating the applicant's noncompliance with the agency's licensure or certification requirements in a facility the applicant owned, operated, or managed in whole or in part.

1. It is the responsibility of the applicant to contact all relevant licensing and certification agencies in all other states where the applicant owns, operates, or manages facilities, in order to secure letters or other documentation from them attesting to the track record of the applicant in those states. This documentation shall be submitted by the applicant as part of the Certificate of Need application.

(f) No more than two Certificate of Need approvals shall be granted to an applicant for the construction of new nursing homes or residential health care facilities or for bed additions to existing or approved facilities, until such time as the applicant has established a licensing track record in New Jersey. For this purpose, the establishment of a licensing track record shall be accomplished by holding at least 10 percent ownership interest or through the actual operation or management of one or more licensed, operational inpatient health care facilities in the State of New Jersey for a period of at least 12 consecutive months.

(g) In making a determination of Federal deficiencies in the case of long-term care, the Department shall use the requirements for long-term care Medicare/Medicaid participation found in 42 CFR Part 483 et al. in the areas of Resident Rights, Resident Behavior and Facility Practice, Quality of Life, and Quality of Care.

(h) Applications for a Certificate of Need to modernize, renovate or initiate new construction shall, to the greatest extent possible and practical, be directed toward correcting life-safety code waivers in categories A and B, N.F.P.A. Life Safety Code 101, incorporated herein by reference.

1. Facilities with life-safety code waivers (whether waived or not) should contact the Department of Health's Division of Health Facilities Evaluation and the Division of Health Planning and Resources Development to discuss the seriousness of the waived conditions prior to submitting a Certificate of Need application.

(i) Any applicant whose Certificate of Need has been denied for reasons related to a history of noncompliance with licensure requirements shall be ineligible for approval of another Certificate of Need until a period of at least one year has elapsed, during which time the applicant shall have demonstrated a record of compliance with licensing requirements. The one year period shall be measured from the time of that licensing inspection which is subsequent to the inspection in which noncompliance was determined and in which substantial compliance has thus been reestablished.

Amended by R.1993 d.671, effective December 20, 1993.
See: 25 N.J.R. 3719(a), 25 N.J.R. 6031(a).

Case Notes

Application of subsidiary for certificate of need properly based on track record of other subsidiaries owned by parent corporation. Matter of Old Bridge Manor, 95 N.J.A.R.2d (HLT) 1.

Refusal to admit HIV-positive patient; denial of Certificate of Need sought by nursing center also owned by owner of center refusing admission to patient. Yihoshna, Inc., t/a Manahawkin Convalescent Center v. Department of Health. 93 N.J.A.R.2d (HLT) 9.

8:33H-1.15 Utilization requirements for Medicaid-eligible patients, Supplemental Security Income (SSI) recipients, and former psychiatric patients

(a) Applicants receiving Certificate of Need approval to add general or specialized long-term care beds to an existing facility or to construct a new nursing home or a replacement facility shall comply with the following utilization requirements: