

"State" means the State of New Jersey.

"State Health Planning Board" means the board established pursuant to N.J.S.A. 26:2H-5.7, to conduct certificate of need review activities.

"Statewide restricted admissions facility" means a non-profit nursing home owned and operated by a religious or fraternal organization that serves only members of that organization and their immediate families and meets the specific requirements set forth in N.J.A.C. 8:33H.

"Subject of a health planning regulation" means any health care service identified in the Appendix, Exhibit 1.

"Teaching hospital" means, for purposes of N.J.A.C. 8:33-3.11(c), a general hospital engaged in a graduate medical education residency program in cardiology approved by a nationally recognized credentialing organization.

"Termination" means a certificate of need is not extended by the Commissioner beyond its expiration date.

"Total capital cost" means all costs associated with the proposed project including studies and/or surveys; architect, engineer, legal fees; plans and specifications; supervision and inspection of site and buildings; demolition, renovation, construction; fixed and major moveable equipment, purchase of land and buildings; lease and/or rentals; developmental and/or start up costs, but excluding carrying and financing cost and/or fees, interest and debt service reserve fund. Total capital cost excludes any contingency amounts.

"Trauma services" means the treatment of wounds or injuries of sufficient severity to require treatment at a Level I or Level II trauma center, as measured by the immediate threat of death imposed by the injury, the presence of injuries to multiple systems, Injury Severity Score or other trauma scoring systems, and/or the application of appropriate trauma triage decision criteria.

"Total project cost" means all costs associated with the proposed project, including all capital costs, carrying and financing costs, net interest on borrowings during construction, debt service reserve fund. Total project cost excludes any contingency amounts.

"Withdrawal" means a voluntary written request by a certificate of need applicant to the Department to cease any further review of a submitted application submitted before the Commissioner acts on the application. Such a request shall be considered final by the Department and no further consideration or review shall be given to the "withdrawn" application.

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).
Amended by R.1999 d.272, effective August 16, 1999.
See: 31 N.J.R. 950(a), 31 N.J.R. 2375(a).
Inserted "Bloodless surgery".

Amended by R.2002 d.243, effective August 5, 2002.
See: 34 N.J.R. 458(a), 34 N.J.R. 2814(a).

Rewrote the section.

Amended by R.2007 d.387, effective December 17, 2007.
See: 39 N.J.R. 3462(a), 39 N.J.R. 5316(b).

Added definitions "Atlantic Cardiovascular Patient Outcomes Research Team trial" and "Elective angioplasty demonstration project".

Case Notes

Certificate of need required when private physician initiated health care service. *Associates In Radiation Oncology, P.A. v. Siegel*, 272 N.J.Super. 208, 639 A.2d 729 (A.D.1994).

Determination that certificate of need was not required, remand required for specific findings of fact. *Associates In Radiation Oncology, P.A. v. Siegel*, 272 N.J.Super. 208, 639 A.2d 729 (A.D.1994).

Standing to appeal determination on application for certificate of need. *Associates In Radiation Oncology, P.A. v. Siegel*, 272 N.J.Super. 208, 639 A.2d 729 (A.D.1994).

Commissioner did not have discretion to remove condition in certificate of need for linear accelerator. In re *Certificate of Need Application of Chilton Memorial Hosp.*, 269 N.J.Super. 426, 635 A.2d 986 (A.D.1993).

Policy statement illustrates pervasiveness of State's regulatory concern. *Desai v. St. Barnabas Medical Center*, 103 N.J. 79, 510 A.2d 662 (1986).

SUBCHAPTER 2. APPLICABILITY OF CERTIFICATE OF NEED REQUIREMENTS

8:33-2.1 Types of review

There will be two types of review of certificate of need applications: full review, as described in N.J.A.C. 8:33-4.1(a), and expedited review, as described in N.J.A.C. 8:33-4.1(b). The full review process shall apply to all certificate of need applications not specifically identified herein as meeting the criteria for expedited review. The review process shall apply as specified in Exhibit 3 of the Appendix, incorporated herein by reference.

Amended by R.1996 d.101, effective February 20, 1996.
See: 27 N.J.R. 4179(a), 28 N.J.R. 1228(a).
Amended by R.2002 d.243, effective August 5, 2002.
See: 34 N.J.R. 458(a), 34 N.J.R. 2814(a).

Substituted "two" for "three" preceding "types of review", deleted "direct review, described in N.J.A.C. 8:33-4.1(b)", substituted "8:33-4.1(b)" for "8:33-4.1(c)" in the first sentence, deleted "direct review or" preceding "expedited review" in the second sentence and substituted "3" for "4" following "Exhibit" in the third sentence.

Case Notes

Commissioner of Health failed to comply with procedural requirements in granting certificate of need. *Matter of Bloomingdale Convalescent Center*, 233 N.J.Super. 46, 558 A.2d 19 (A.D.1989).

Regulations reflect concern over those aspects of health care that relate to patient access as well as personnel policies affecting patient care. *Desai v. St. Barnabas Medical Center*, 103 N.J. 79, 510 A.2d 662 (1986).

8:33-2.2 Determination of a health care facility or service

(a) It is incumbent upon all health care facilities and services to comply with the certificate of need requirements set forth in statute and rules promulgated pursuant thereto. If such automatic compliance is not forthcoming, the Commissioner, consistent with the "public policy of the State that access to health care services of the highest quality are of vital concern to the public health" (N.J.S.A. 26:2H-1) and in accordance with the definitions of a health care facility and a health care service, as specified in N.J.S.A. 26:2H-2 and 26:2H-7, shall determine whether a proposed or existing system or modality of health care delivery constitutes a health care service or health care facility subject to certificate of need requirements. If so designated, such facility shall be subject to all of the provisions of the Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq.) and rules promulgated pursuant thereto.

(b) Those factors which shall be considered relevant as to whether a facility meets the definition of a health care facility or service shall include:

1. The types of health care service and facilities, and changes thereto, which are required to obtain certificate of need approval by the provisions of this subchapter;
2. The type of health care service delivered or to be delivered, its impact on existing health care facilities and providers and its potential effect on the health care delivery system;
3. The degree of complexity in terms of medical technology, equipment, and the medical, paramedical and administrative staffing required to provide the health care service; and
4. Any other factors specific to the unique circumstances of an individual applicant.

(c) When a determination is made that a health care service/health care facility is deemed to require certificate of need review, the person(s) involved shall be so notified by the Commissioner. The Commissioner's decision shall be a final agency decision.

Amended by R.2002 d.243, effective August 5, 2002.

See: 34 N.J.R. 458(a), 34 N.J.R. 2814(a).

In (a), rewrote the second sentence; deleted (b) and recodified former (c) as (b), substituted "as to whether a facility meets the definition" for "to the determination" following "relevant"; deleted former (c)3 and recodified former 4 as 3, deleted former 5 through 6 and recodified former 7 as 4; recodified former (d) as (c).

Law Review and Journal Commentaries

Health Law—Hospitals. Steven P. Bann, 136 N.J.L.J. No. 5, 66 (1994).

Case Notes

Commissioner could not have discretion to remove condition in certificate of need for linear accelerator. In re Certificate of Need Application of Chilton Memorial Hosp., 269 N.J.Super. 426, 635 A.2d 986 (A.D.1993).

Women's medical centers held by Commissioner to be health care facilities; Appellate Division held that regulations cannot apply to private office on basis of internal business management. Women's Medical Center at Howell v. Finley, 7 N.J.A.R. 262 (1982), reversed 192 N.J.Super. 44, 469 A.2d 65, certification denied 96 N.J. 279, 475 A.2d 578. (App.Div.1983).

Outpatient drug rehabilitation clinic required to obtain certificate of need; zoning ordinance liberally construed to permit clinic operation. L & L Clinics, Inc. v. Irvington, 189 N.J.Super. 332, 460 A.2d 152 (App.Div.1983), certification denied 94 N.J. 540, 468 A.2d 191 (1983).

Statutory amendment exempting certain non-profit corporations from certificate of need requirements constitutional; amendment not prohibited special legislation. Paul Kimball Hospital v. Brick Twp. Hospital, 86 N.J. 429, 432 A.2d 36 (1981).

Mobile multiphasic health testing service is a health care facility subject to certificate of need requirements. Medcor, Inc. v. Finley, 179 N.J.Super. 142, 430 A.2d 964 (App.Div.1981).

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.

Improper transfer of nursing care facilities; period from dates on which facilities entered into agreements until applications for Certificate of Need filed constituted periods of violations; penalties assessed. In Matter of Oakridge Manor Nursing Home. 93 N.J.A.R.2d (HLT) 1.

Denial of Certificate of Need for proposed hyperbaric chamber facility; reasonable. New Jersey Chamber Facility, Inc. v. Department of Health. 92 N.J.A.R.2d (HLT) 5.

Failure to secure legal representation to appeal decision approving application for certificate of need for development of a Hyperbaric Oxygen Therapy Program warranted dismissal of appeal. N.J.S.A. 26:2H-6. In Matter of the Medical Center of Ocean County, 91 N.J.A.R.2d 1 (HLT).

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).

Religiously sponsored nursing homes not exempt from certificate of need requirements; religious need another factor in certificate determination. Attorney General Formal Opinion 1974-No. 2.

8:33-2.3 (Reserved)

Repealed by R.2002 d.243, effective August 5, 2002.

See: 34 N.J.R. 458(a), 34 N.J.R. 2814(a).

Section was "Waiver to certificate of need requirements for physicians".

8:33-2.4 (Reserved)

Repealed by R.2002 d.243, effective August 5, 2002.

See: 34 N.J.R. 345(a), 34 N.J.R. 2814(a).

Section was "Waivers to certificate of need requirements for health maintenance organizations".