1. The availability of facilities or services which may serve as alternatives or substitutes;

2. The need for special equipment and services in the area;

3. The adequacy of financial resources and sources of present and future revenues;

4. The availability of sufficient manpower in the several professional disciplines; and

5. Other applicable requirements which are specified in any health planning rule adopted by the Department.

(b) It shall be the responsibility of the applicant to adequately and appropriately demonstrate that the proposed project meets the standards set forth in (a) above. It is not incumbent upon the reviewing agencies to demonstrate lack of need.

(c) No certificate of need shall be granted to any facility that, during the course of the application process, fails to provide or fails to contractually commit to provide services to medically undeserved populations residing or working in its service area as adjusted for indications of need. In addition, no certificate of need shall be granted to any facility that fails to comply with State and Federal laws regarding its obligation not to discriminate against low income persons, minorities, and disabled individuals.

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).
Administrative correction.
See: 30 N.J.R. 3645(a).
Amended by R.2002 d.243, effective August 5, 2002.
See: 34 N.J.R. 458(a), 34 N.J.R. 2814(a).
Rewrote (a).

Case Notes

Reliance on ranking of local advisory board to approve application for certificate of need with highest priority was not unreasonable. Application of Staff Builders Services, 95 N.J.A.R.2d (HLT) 30.

Denial of application for certificate of need to operate medical center hospice was not unreasonable when based on lack of area need. Matter of Community Medical Center/HHP, 95 N.J.A.R.2d (HLT) 27.

Denial of hospital's application to provide home health agency services was unreasonable when alleged shortcomings were also present in other approved applications. Burdette Tomlin v. State Health Planning Board, 95 N.J.A.R.2d (HLT) 13.

8:33–4.10 Specific criteria for review

(a) Each applicant for a certificate of need shall show how the proposed project shall promote access to low income persons, racial and ethnic minorities, women, disabled persons, the elderly, and persons with HIV infections and other persons who are unable to obtain care. In determining the extent to which the proposed service promotes access and availability to the aforementioned populations, the applicant, where appropriate, shall address in writing the following:

1. The contribution of the proposed service in meeting the health related needs of members of medically underserved groups as may be identified in the applicant's service area;

2. The extent to which medically underserved populations currently use the applicant's service or similar services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

3. The performance of the applicant in meeting its obligation, if any, under any applicable State and Federal regulations requiring provision of uncompensated care, community services, or access by minorities and handicapped persons to programs receiving Federal financial assistance (including the existence of any civil rights access complaints against the applicant);

4. How and to what extent the applicant will provide services to the medically indigent, Medicare recipients, Medicaid recipients and members of medically underserved groups;

5. The extent to which the applicant offers a range of means by which its service (for example, outpatient services, admission by house staff, admission by personal physician) will be accessible and available to a person;

6. The amount of charity care, both free and below cost service, that will be provided by the applicant;

7. Access by public or private transportation to the proposed project, including applicant-sponsored transportation services;

8. As applicable, means of assuring effective communication between the staff of the proposed project and non-English speaking people and those with speech, hearing, or visual handicaps must be documented; and

9. Where applicable, the extent to which the project will eliminate architectural barriers to care for handicapped individuals.

(b) Each applicant for certificate of need shall demonstrate that the proposed project will maintain or enhance quality of care, can be financially accomplished and maintained, and licensed in accordance with applicable licensure regulations; how it shall address otherwise unmet needs in the planning region; that it shall not have an adverse impact on access to health care services; and that projected volume is reasonable. Evaluation of the applications shall include a review of:

1. Demographics of the area, particularly as related to the populations affected by the proposed project;

2. Economic status of the service area, particularly as related to special health service needs of the population; and future facility cash flow;

3. Physician and professional staffing issues;

4. Availability of similar services at other institutions in or near the service area;

5. Provider's historical and projected market shares;

6. The immediate and long term financial impact on the institution. This review shall assess:

i. Whether the method of financing identified is accurately calculated and economically feasible, and is the least cost method available;

ii. Impact of the proposed project on capital cost, operating cost, projected revenues, and charges for the year prior to the application and the two years following project completion;

iii. Impact of the proposed project on the provider's financial condition, as measured by financial statements, including balance sheets, income statements and cash-flow statements;

7. Whether the applicant has demonstrated the ability to obtain the necessary capital funds;

8. Each applicant for certificate of need shall demonstrate how the proposed project shall comply with applicable rules and regulations governing the construction, modernization or renovation of the project. The applicant shall address the following:

i. A cost estimate of the project stated in those dollars which would be needed to complete the project over the anticipated period of construction, assuming that construction was to begin at the time of the certificate of need submission; and

ii. A detailed description of the project including square footage, construction type, current and proposed use of areas proposed for renovations, anticipated construction related circumstances, impact of asbestos abatement, accounting of all displaced department services areas, relocations and vacated areas.

(c) The Commissioner may request any additional information deemed necessary to establish that the proposed project will not adversely affect the State's health care system.

(d) Each applicant for certificate of need shall demonstrate character and competence, quality of care, and an acceptable track record of past and current compliance with State licensure requirements, applicable Federal requirements, and State certificate of need requirements, including, but not limited to, the following:

1. The performance of the applicant in meeting its obligation under any previously approved certificate of need including full compliance with the cost and scope as approved, as well as all conditions of approval;

2. 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 (d)2i below and may, if applicable, also include (d)2ii through iv below:

i. A satisfactory record of compliance with licensure standards in existing health care facilities that are owned, operated, or managed, in whole or part, by the applicant. This may include reports issued by licensing agencies from other states, as well as from the Department. Applicants shall document their requests to licensing agencies in other states, where applicable, as well as the responses from those agencies. Applicants shall not be penalized for the failure of licensing agencies in other states to respond to their requests unless they failed to make the requests in a timely manner. In the event that an applicant is unable to obtain a written report from a licensing agency in another state, the applicant may submit, in lieu of the written report, an attestation that its compliance record in that state does not contain any violations of (d)3 through 5 below along with documentation of its efforts to obtain a written report;

ii. 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;

iii. Documentation of compliance with the standards of accreditation of nationally-recognized professional bodies; and

iv. Where applicable, a recommendation by the State Department of Human Services' Division of Medical Assistance and Health Services and Division of Mental Health Services 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;

3. The Department shall examine and evaluate the licensing track record of each applicant for the period beginning 12 months preceding submission of the application and extending to the date on which the Commissioner renders a decision with respect to the application, 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 where an applicant has not demonstrated such capacity, as evidenced by continuing violations or a pattern of violations of State licensure standards or Federal certification standards or by existence of a criminal conviction or a plea of guilty to a charge of fraud, patient or resident abuse or neglect, or crime of violence or moral turpitude. An application also may be denied where an applicant has violated any State licensing or Federal certification standards in connection with an inappropriate discharge or denial of admission. 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, excluding individuals or entities who are limited partners with no managerial control or authority over the operation of the facility and who have an ownership interest of 10 percent or less in a corporation which is the applicant and who also do not serve as officers or directors of the applicant corporation;

4. A certificate of need application submitted by an applicant who was cited for any State licensing or Federal certification deficiency during the period identified in (d)3 above, which presented a serious risk to the life, safety, or quality of care of the facility's patients or residents, shall be denied, except in cases where the applicant has owned/operated the facility for less than 12 months and the deficiencies occurred during the tenure of the previous owner/operator. In any facility, the existence of a track record violation during the period identified in (d)3 above shall create a rebuttable presumption, which may be overcome as set forth below, that the applicant is unable to meet or surpass licensing standards of the State of New Jersey. Those applicants with track record violations which would result in denial of the application shall submit with their application any evidence tending to show that the track record violations do not presage operational difficulties and quality of care violations at the facility which is the subject of the application or in any other licensed long-term care category facility in New Jersey, which is operated or managed by the applicant. If, after review of the application and the evidence submitted to rebut a negative track record, the Commissioner denies the application, the applicant may request a hearing which will be held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., and 52:14F–1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. At the Commissioner's discretion, the hearing shall be conducted by the Commissioner or transferred to the Office of Administrative Law. The purpose of the hearing is to provide the applicant with the opportunity to present additional evidence in conjunction with evidence already included with the initial application, for the purpose of demonstrating the applicant's operational history and capacity to delivery quality of care to patients or residents which meets or surpasses licensing standards of the State of New Jersey to the satisfaction of the Commissioner or his or her designee. The conclusion of that process with either a decision by the Commissioner or the Commissioner's acceptance or denial of an initial decision by an administrative law judge shall constitute a final agency decision. A serious risk to life, safety, or quality of care of patients or residents includes, but is not limited to, any deficiency in State licensure or Federal certification requirements (42 C.F.R. 488.400 et seq.) resulting in:

i. An action by a State or Federal agency to ban, curtail or temporarily suspend admissions to a facility or to suspend or revoke a facility's license;

ii. A decertification, termination, or exclusion from Medicaid or Medicare participation, including denial of payment for new admissions, imposed by the Department or by the Health Care Financing Administration, as a result of noncompliance with Medicaid or Medicare conditions of participation.

5. In addition to the conditions specified at (d)4 above, an application for a long-term care category service, including, but not limited to, a long-term care facility, assisted living residence, assisted living program or comprehensive personal care home, shall be denied upon a finding that any long-term care facility or hospital-based subacute care unit in New Jersey operated or managed by the applicant has, within the 12 months preceding submission of the application and extending to the date on which the Commissioner renders a decision with respect to the application, been the subject of one or more of the following:

i. A citation of any deficiency posing immediate jeopardy at a pattern or widespread scope level, or any deficiency causing actual harm at a widespread scope level, as described at 42 C.F.R. 488;

ii. A determination that the provider is a "poor performer," on the basis of a finding of substandard quality of care or immediate jeopardy, as described at 42 C.F.R. 488, on the current survey and on a survey during one of the two preceding years. For the purposes of this subchapter, "substandard quality of care" means one or more deficiencies related to participation requirements under 42 C.F.R. 483.13, Resident behavior and facility practices, 42 C.F.R. 483.15, Quality of life, or 42 C.F.R. 483.25, Quality of care, which constitute either immediate jeopardy to resident health or safety; a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm;

iii. A citation of a deficiency based on a finding of substandard quality of care in two different areas on the same survey. Such facilities will be afforded an opportunity to correct the deficiencies by a date specified in the Departmental notice accompanying the statement of deficiencies. If substantial compliance is achieved in all areas, the waiting period, as that term is defined in (d)10 above, shall terminate with the next standard survey of the facility, if that survey indicates substantial compliance. The Department shall conduct another full survey within approximately nine months of the date of the previous full survey during which the deficiencies were cited. If the deficiencies have not been corrected by the date specified in the Departmental notice accompanying the statement of deficiency, the 12–month waiting period shall commence on the date on which the deficiencies are corrected and compliance is achieved;

iv. A determination that the facility has failed to correct deficiencies which have been cited, and where this has resulted in a denial by the Health Care Financing Administration of payment for new admissions or a requirement by the Department to curtail admission.

6. The criteria for denial of an application specified in (d)4 and 5 above shall also result in denial of the application if the criteria are found to have been true of any number of out-of-State facilities operated or managed by the applicant, within the 12 months preceding submission of the application and extending to the date on which the Commissioner renders a decision with respect to the application and with respect to any service which is similar or related to the proposed service, constituting at least five percent of all facilities operated or managed by the applicant or five facilities in total, whichever is less.

7. In addition to the provisions of (d)l through 6 above, and notwithstanding any express or implied limitations contained therein, the Commissioner may deny any application where he or she determines that the actions of the applicant at any facility operated or managed by the applicant constitute a threat to the life, safety, or quality of care of the patients or residents. In exercising his or her discretion under this rule, the Commissioner shall consider the following:

i. The scope and severity of the threat;

ii. The frequency of occurrence;

iii. The presence or absence of attempts at remedial action by the applicant;

iv. The existence of any citations, penalties, warnings, or other enforcement actions by any governmental entity pertinent to the condition giving rise to the threat;

v. The similarity between the service within which the threat arose and the service which is the subject of the application; and

vi. Any other factor which the Commissioner deems to be relevant to assessment of risk presented to patients or residents.

8. For the purposes of this section, similarity or relatedness of any two services is determined by the inclusion of the two services together in one of the following categories:

i. The long-term care category, which includes but is not limited to long-term care facility, hospital-based subacute care unit, residential health care facility, alternate family care program, pediatric or adult day health care program, or assisted living provided through an assisted living residence, assisted living program or comprehensive personal care home.

ii. The general or special hospital category, which includes hospital services such as medical/surgical, pediatric, obstetric, cardiac, psychiatric, and intensive care/critical care, comprehensive rehabilitation, long term acute care, surgical services, magnetic resonance imaging and computerized tomography, extracorporeal shock wave lithotripsy, renal dialysis, positron emission tomography scanner, gamma knife, hyperbaric chamber, and birth centers.

iii. The ambulatory care and other category, which includes primary care, home health care, family planning, drug counseling, termination of pregnancy, birth centers, renal dialysis, magnetic resonance imaging, computerized axial tomography, extracorporeal shock wave lithotripsy, hyperbaric chamber, hospice, ambulatory surgery, and outpatient rehabilitation.

iv. The substance abuse treatment category, which includes residential alcohol treatment, residential drug treatment, and outpatient drug treatment.

9. In evaluating track records pursuant to (d)3 through 8 above, the Department may consider any evidence of noncompliance with applicable licensure requirements provided by an official state licensing agency in any state other than 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.

10. Any person with a history of noncompliance with statutory or regulatory requirements which, as determined by the Department, threaten the life, safety or quality of care of patients shall be ineligible to file a certificate of need application until a waiting period of at least one year has elapsed, except as specified at (d)5iii above, during which time the person must have demonstrated a record of substantial compliance with licensing or regulatory standards. The one-year period shall be measured from the time of the last licensure or certification action indicating full compliance with regulatory standards.

11. No certificate of need application will be approved for any applicant with existing non-waiverable violations of licensure standards at the time of filing, or before final disposition of the application or for an applicant with a history of noncompliance with licensing, statutory or regulatory standards which, as determined by the Department, threaten the life, safety or quality of care of patients. An exception shall be made in the case of applications submitted for the purpose of correcting recognized major licensure deficiencies. An exception to this provision may also be granted for applications submitted for the closure of a general hospital.

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.2002 d.243, effective August 5, 2002.
See: 34 N.J.R. 458(a), 34 N.J.R. 2814(a).
Rewrote the section.
Petition for Rulemaking.
See: 34 N.J.R. 3652(b), 34 N.J.R. 4475(b).

Case Notes

Lack of sufficient record precludes finding certificate of need application's disapproval reasonable. Rolling Hills of Hunterdon Care Center, Inc. v. State Health Planning Center, 97 N.J.A.R.2d (HLT) 3.

Denial of hospital's application to provide home health agency services was unreasonable when alleged shortcomings were also present in other approved applications. Burdette Tomlin v. State Health Planning Board, 95 N.J.A.R.2d (HLT) 13.

Denial of Certificate of Need for construction of new long-term care facility was not arbitrary and capricious. In Matter of Application of Mediplex of Voorhees for Certificate of Need. 93 N.J.A.R.2d (HLT) 37.

8:33–4.11 (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 "Notification of review cycles".

8:33–4.12 (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 "Functions of local advisory boards".

8:33–4.13 Role of the State Health Planning Board

(a) The State Health Planning Board shall review applications for certificates of need subject to full review and make recommendations to the Commissioner in accordance with all applicable health planning regulation.

(b) A member of the State Health Planning Board shall not vote on any matter before the board concerning an individual or entity with which the member has, or within the last 12 months has had, any substantial ownership, employment, medical staff, fiduciary, contractual, creditor or consultative relationship. A member who has or has had such a relationship with an individual or entity involved in any matter before the board shall make a written disclosure of the relationship before any action is taken by the board with respect to the matter and shall make the relationship public in any meeting in which action on the matter is to be taken. Board members with a conflict of interest shall remove themselves from the table and shall not participate in the discussion of the relevant application(s).

(c) The State Health Planning Board shall furnish written decisions to the Commissioner which provide the explicit basis for any recommendations made by the Board on certificate of need applications. Such written decisions shall be forwarded to the Commissioner within 90 days after the application is deemed complete for processing unless the application has been deferred pursuant to N.J.A.C. 8:33–4.7 or because of the conduct of an administrative hearing regarding one of the batched applications. These written decisions may take the form of minutes of the State Health Planning Board.

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.2002 d.243, effective August 5, 2002.
See: 34 N.J.R. 458(a), 34 N.J.R. 2814(a).
In (a), inserted "subject to full review" following "certificates of need".

Case Notes

Appeal from denial of certificate of need. St. Joseph's Hospital and Medical Center v. Finley, 153 N.J.Super. 214, 379 A.2d 467 (App.Div. 1977), certification denied 75 N.J. 595, 384 A.2d 825 (1978). St. Vincent's Hospital v. Finley, 154 N.J.Super. 24, 380 A.2d 1152 (App. Div.1977). Irvington General Hospital v. Dept. of Health, 149 N.J.Super. 461, 374 A.2d 49 (App.Div.1977). National Nephrology Foundation v. Dougherty, 138 N.J.Super. 470, 351 A.2d 392 (App.Div.1976).

No private right of action. Delaware Valley Transplant Program v. Coye, D.N.J.1989, 722 F.Supp. 1188.

Res judicata did not preclude federal district court from considering claim of Delaware organ procurement agency that decision to authorize as sole statewide procurer was impermissible. Delaware Valley Transplant Program v. Coye, D.N.J.1989, 722 F.Supp. 1188.

Either transcript or minutes of state health board's meeting could serve as required "written decision" regarding recommendations on certificate of need (CON) applications, so long as document in question contained particularized explanation of reasons for grant or denial of CON. Application of Holy Name Hosp., 301 N.J.Super 282, 693 A.2d 1259 (1997).

State Health Planning Board required to explain its recommendations regarding certificate of need applications. In Re Hospital Home Care, Inc., 96 N.J.A.R.2d (HLT) 50.

Denial of certificate of need on basis of low priority ranking of local advisory board was not unreasonable. Alternative Health Care of Gloucester v. State Health Planning Board, 95 N.J.A.R.2d (HLT) 33.

Denial of Certificate of Need for construction of new long-term care facility was not arbitrary and capricious. In Matter of Application of Mediplex of Voorhees for Certificate of Need. 93 N.J.A.R.2d (HLT) 37.

8:33–4.14 (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 "Procedures for review by local advisory boards and the State Health Planning Board".

8:33–4.15 Procedures for Commissioner review

(a) The Commissioner may approve or deny an application for a certificate of need 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 shall be sent to the applicant 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 denies a certificate of need application, the applicant may request a hearing pursuant to the Administrative Procedure Act, P.L. 1968, c.410 (N.J.S.A. 52:14B–1 et seq. and 52:14F–1 et seq.) and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) A request for a hearing shall be made to the Department within 30 days of receipt of notification of the Commissioner's decision. The hearing shall be conducted according to the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq. and 52:14F–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 Department shall arrange within 60 days of a request, for a hearing and after such hearing the Commissioner and or his or her designee shall furnish the applicant in writing the hearing examiner's recommendations and reasons therefor. The Commissioner within 30 days of receiving all appropriate hearing records shall make his or her determination, which shall be a final agency decision.

(d) After the commencement of a 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 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.

(f) If the Department determines that the holder of an unimplemented 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 shall 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.

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.

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.

State Health Planning Board's decision not to forward health care provider's certificate of need application to Commissioner of Health not reasonable. In the Matter of VNA of Central Jersey, 96 N.J.A.R.2d (HLT) 63.

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 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 conditions of approval 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 shall 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 shall 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).