

CHAPTER 33H
CERTIFICATE OF NEED: POLICY MANUAL
FOR LONG TERM CARE SERVICES

Authority

N.J.S.A. 26:2H-1 et seq., as amended by P.L. 1998, c.43.

Source and Effective Date

R.2004 d.354, effective August 25, 2004.
 See: 36 N.J.R. 1641(a), 36 N.J.R. 4306(a).

Chapter Expiration Date

Chapter 33H, Certificate of Need: Policy Manual for Long Term Care Services, expires on August 25, 2009.

Chapter Historical Note

Chapter 33H, Certificate of Need: Reviews of Long-Term Care Facilities and Services, was adopted as R.1980 d.404, effective September 18, 1980. See: 12 N.J.R. 393(a), 12 N.J.R. 579(b).

Pursuant to Executive Order No. 66(1978), Chapter 33H was readopted as R.1985 d.413, effective July 19, 1985. See: 17 N.J.R. 1216(a), 17 N.J.R. 2034(a).

Pursuant to Executive Order No. 66(1978), Chapter 33H, Certificate of Need: Reviews of Long-Term Care Facilities and Services, was readopted as R.1990 d.303, effective May 16, 1990. See: 22 N.J.R. 897(a), 22 N.J.R. 1938(a).

Chapter 33H, Certificate of Need: Reviews of Long-Term Care Facilities and Services, was repealed and a new Chapter 33H, Certificate of Need Policy Manual for Long Term Care Services, was adopted by R.1992 d.344, effective September 8, 1992. See: 24 N.J.R. 2014(a), 24 N.J.R. 3144(a).

Pursuant to Executive Order No. 66(1978), Chapter 33H, Certificate of Need Policy Manual for Long Term Care Services, expired on September 8, 1997.

Chapter 33H, Certificate of Need: Policy Manual for Long Term Care Services, was adopted as new rules by R.1998 d.134, effective March 16, 1998. See: 29 N.J.R. 3794(a), 30 N.J.R. 1085(a).

Pursuant to Executive Order No. 66(1978), Chapter 33H, Certificate of Need: Policy Manual for Long Term Care Services, was readopted as R.2001 d.104, effective March 1, 2001. See: 32 N.J.R. 4071(a), 33 N.J.R. 1101(a).

Chapter 33H, Certificate of Need: Policy Manual for Long Term Care Services, was readopted as R.2004 d.354, effective August 25, 2004. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

8:33H-1.1 Purpose; scope

(a) The purpose of this chapter is to set forth Certificate of Need and related planning requirements for long-term care services.

(b) The Department has a major responsibility for the promotion of high quality, efficiently and economically rendered health services which are available to all citizens of the State. To ensure significant progress toward the achievement of this goal, the Department should direct planning and Certificate of Need activities toward the following:

1. Health promotion and minimization of debilitation;
2. Enhancement of the quality of life of long-term care consumers/patients and their families and/or significant others;
3. Expansion of both general and specialized long-term care options to maximize consumer choice;
4. Increased geographic, economic, and architectural accessibility of long-term care services;
5. Expansion of long-term care services to the extent that they are needed, while minimizing excess, underutilized capacity;
6. Increased affordability of long-term care services, the cost of which must be borne by consumers and the government;
7. Access to long-term care services without regard to race, ethnicity, or medical diagnoses, including HIV infection or a history of psychiatric illness;
8. Coordination of long-term care services; and
9. Community participation in decision-making about the development of expanded long-term care services.

(c) The rules contained in this chapter address the Certificate of Need requirements for the following categories and types of facilities, as they are defined in N.J.A.C. 8:33H-1.2:

1. Nursing homes;
2. Comprehensive personal care homes;
3. Pediatric long-term care;
4. Specialized long-term care;
5. Assisted living residences;
6. Assisted living programs; and
7. Statewide restricted admissions facilities.

(d) Home health care is recognized as an important component of the long-term care system; however, the Certificate of Need requirements for home health care agencies are not contained in this chapter. Applicants interested in offering home health services in New Jersey should refer to N.J.A.C. 8:33-4.1(a). However, applications for this service will only be accepted in response to a call issued by the Department and published in the New Jersey Register.

(e) Some patients in nursing homes may, on occasion, require rehabilitative care. The rehabilitative services offered to patients in most nursing homes are distinguished from comprehensive rehabilitation, which may only be offered by a licensed rehabilitation hospital. Applicants interested in offering comprehensive rehabilitation should refer to N.J.A.C. 8:33M and 8:33-4.1(a). However, applications for this service will only be accepted in response to a call issued by the Department and published in the New Jersey Register.

(f) The provisions contained in this chapter shall apply uniformly to Certificate of Need applications for private and public facilities, whether State, county, municipal, incorporated, not incorporated, proprietary, or nonprofit, unless it is otherwise stated.

(g) Where a Certificate of Need is granted for long-term care beds, the applicant shall agree to occupy those beds with residents who require general nursing home care or, if so designated in the letter of approval, specialized long-term care. Applicants approved for long-term care beds shall not admit residents who require a different licensing category of care, such as comprehensive rehabilitation, unless the Commissioner has determined that admission is warranted to respond to an emergency situation and has granted approval in writing.

1. Applicants shall not advertise their facilities' services in such a way that consumers might reasonably construe that the level of care provided is something other than general nursing home care or, if so designated in the letter of approval, specialized long-term care.

Amended by R.1993 d.671, effective December 20, 1993.

See: 25 N.J.R. 3719(a), 25 N.J.R. 6031(a).

Amended by R.2004 d.354, effective September 20, 2004.

See: 36 N.J.R. 1641(a), 36 N.J.R. 4306(a).

In (b), inserted "both general and specialized" following "Expansion of" in 3; in (c), deleted 8 to 10; in (d) and (e), amended the N.J.A.C. reference and added last the sentence; in (g), substituted "residents" for "patients" throughout.

Case Notes

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.

8:33H-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Aging in place" means a process whereby individuals remain in their living environment despite the physical and/or mental decline and growing needs for supportive services that may occur in the course of aging. For aging in place to occur, services are added, increased, or adjusted to compensate for the person's physical and/or mental decline.

"Applicant" means an individual, a partnership, a limited liability partnership, a corporation (including associations and joint-stock companies, a limited liability corporation, a State, or a political subdivision (including a municipal corporation) of a State that will be the licensed operator of the proposed service, facility or equipment, which will have overall responsibility for the health care service to be provided.

"Assisted living" means a coordinated array of supportive personal and health services, available 24 hours per day, to residents who have been assessed to need these services, including residents who require formal long-term care. Assisted living promotes resident self-direction and participation in decisions that emphasize independence, individuality, privacy, dignity, and homelike surroundings.

"Assisted living program" means the provision of or arrangement for meals and assisted living services, when needed, to the tenants (also known as residents) of publicly subsidized housing which because of any Federal, State, or local housing laws, regulations or requirements cannot become licensed as an assisted living residence. An assisted living program may also provide staff resources and other services to a licensed assisted living residence and a licensed comprehensive personal care home.

"Assisted living program provider" means an organization licensed by the New Jersey Department of Health and Senior Services, in accordance with N.J.A.C. 8:36, to provide all services required of an assisted living program.

"Assisted living residence" means a facility which is licensed by the Department, in accordance with N.J.A.C. 8:36, to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed, to four or more adult persons unrelated to the proprietor. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.

8:33H-1.6 Specialized long-term care

(a) For the purposes of this chapter, specialized long-term care shall include the following categories:

1. Ventilator care for adult patients; and
2. Care of residents with severe behavior management problems, such as combative, aggressive, and disruptive behaviors.

(b) A Certificate of Need shall be required for the establishment of a new specialized care program, including the conversion of general long-term care beds for specialized care use, or for the expansion of an existing specialized care program. The Certificate of Need applicant shall identify the type of specialized care residents who will be admitted to the proposed nursing facility beds in accordance with the categories identified in (a) above. Specialized care beds shall be dedicated for exclusive use by the type or types of specialized care residents identified in the approval letter.

1. Certificate of Need approval shall be required in the event that an applicant intends to occupy specialized care beds with residents who do not require specialized care or residents who do not require the type of specialized care which was identified in the applicant's Certificate of Need. An application for the conversion of specialized care beds for some other use shall comply with the requirements in N.J.A.C. 8:33H-1.13(f).

(c) Specialized care beds shall be approved to meet a need in a planning region as defined in N.J.A.C. 8:33H-1.2. The applicant shall document how access to the unit's services shall be assured for residents throughout the planning region.

(d) The number of new beds needed in each planning region for long-term ventilator care shall be determined in the following manner:

1. On a periodic basis (that is, at least once every five years), the Department shall conduct a survey of acute care hospitals, special hospitals, and other health care facilities at a particular point in time to identify all patients who are medically ready for discharge and who are in need of transfer to a facility that provides long-term ventilator care;
2. Through the survey, the number of patients shall be counted for each planning region;
3. The projected rate of growth in the population age 20 and over in each regional health systems area shall be calculated using the most recent New Jersey Department of Labor population projections, covering the four-year period from the time a Certificate of Need application is accepted for processing up to the target year. The number of patients in each planning region requiring ventilator care, as identified through the survey, shall then be adjusted (that is, multiplied) by the aforementioned, region-specific adult population growth rate. The latter

product shall then be added to the number of patients in the regional service area requiring each type of specialized care:

$$\begin{array}{rcl} \text{Number of Patients} & & \text{Region-Specific} \\ \text{Requiring Ventilator} & \times & \text{Growth Rate,} \\ \text{Care, Per Survey} & & \text{Population Age 20+} \\ & & + \text{Number of Patients} \\ & & \text{Requiring Ventilator} \\ & & \text{Care, Per Survey;} \end{array}$$

4. The projected number of patients in each planning region requiring ventilator care as derived in (d)3 above, shall then be adjusted (that is, divided by a factor of .85) to allow for a projected occupancy rate of at least 85 percent, in accordance with (i) below.

(e) A formal methodology shall not be used to determine the number of beds needed for the specialized care of residents with severe behavior management problems. However, in the interest of promoting improved access to high quality care for these residents whose needs cannot safely and effectively be met in general long-term care facilities, the Commissioner shall give consideration to approving one model program in each planning region. Model programs may be approved providing that the following requirements are met, in addition to all other applicable requirements of this chapter:

1. The applicant shall document to the satisfaction of the Department that the number of beds proposed is reasonable with respect to the need for specialized long-term care for residents with severe behavior management problems in the planning region. However, no more than 32 beds in any one nursing home in each planning region shall be approved for a model program. Protecting individuals' identities, the applicant shall provide resident-specific data to demonstrate that there is a sufficient number of individuals residing in the planning region who could meet the model program's admission criteria at the time of application submission, in order to fill 85 percent of the proposed number of beds in the model program. Resident specific data shall include each individual's age, sex, county of residence, diagnoses, functional impairments, current placement, and reasons why the current placement is inappropriate;

2. The facility shall develop and maintain a collaborative affiliation with at least one school of nursing which grants baccalaureate and/or master's degrees in nursing, one school of social work, and one medical school, for the purpose of providing ongoing clinical training and research on site in the specialized care unit;

3. The model program shall include a formal research and program evaluation component. The applicant shall describe in detail how patient care outcomes will be evaluated by an independent party or organization. A report of this evaluation shall be submitted to the Department within three years of licensure of the approved beds. In view of the fact that Medicaid does not reimburse for research-related expenses, the applicant shall identify funding sources and otherwise explain how the costs of research will be covered;

4. The application shall include admission and discharge criteria which assure that the most difficult-to-manage residents in the regional service area shall receive priority for placement in the model program;

5. The application shall include a detailed plan describing how continuity of care will be assured for residents who are admitted to and discharged from the model program. The facility in which the model program will be located shall have available at all times a reasonable number of beds in other nursing units within the facility in order to allow for the transfer of residents who are no longer in need of specialized care as it is offered in the model program. Furthermore, the applicant shall specify how other nursing homes throughout the planning region shall be involved in assuring continuity of care for residents who are admitted to and discharged from the model program;

6. The facility shall develop and maintain an ongoing program whereby designated staff members are available to offer other area health care facilities in the planning area training, educational seminars, and technical assistance in the care of residents with severe behavior management problems;

7. The model program shall conduct multidisciplinary team meetings on a regular basis for the purpose of establishing and reviewing each resident's plan of care; the multidisciplinary team shall include staff members involved in direct resident care on the unit, such as physicians, nurses, social workers, psychologists, activities therapists, and so forth. The certificate of need application shall document how the multidisciplinary team will promote innovative approaches to care for residents with severe behavior management problems; and

8. The special care unit shall have a medical director with demonstrated expertise in the care of adult residents with behavior management problems.

(f) The establishment, addition, or conversion of beds for either types of specialized care shall be approved only in those cases where the facility will have one or more distinct and separate nursing units which treat exclusively residents who require the type of specialized care for which the facility receives Certificate of Need approval.

(g) All applicants for specialized care beds shall provide the following, to the satisfaction of the Department:

1. A detailed description of the services and program of care that will be provided;

2. Specific admission and discharge criteria for the proposed unit, which clearly identify the types of residents who will be treated in the specialized care beds;

3. A specific plan to provide in-service training for nursing staff and others who will work with specialized care residents, including an orientation program for new staff members, ongoing in-service education, and opportunities to pursue advanced education and certification in the appropriate clinical specialties;

4. A description of physical plant considerations and special architectural features of the proposed unit as well as an identification of any special equipment that will be installed in order to accommodate residents' needs;

5. A signed transfer agreement with at least one acute care hospital with a licensed capacity of at least 200 beds to which specialized care residents can be transferred within 30 minutes total travel time for the purpose of receiving emergency medical treatment, if the proposed specialized care unit will not be located within an acute care hospital. The applicant shall submit documentation of the reasons why a particular hospital was chosen for the transfer agreement, including a description of the hospital's resources and capability to address the needs of patients requiring the applicable type of specialized care; and

6. A specific plan to provide coordination and continuity of care for residents who may be discharged from the proposed specialized care beds when this is feasible and beneficial to the patient/family/significant other. Supporting documentation for the plan may include signed transfer agreements or referral arrangements with licensed home health agencies and other health care facilities in the nursing home's regional service area which maintain the resources and capability to offer follow-up specialized care.

(h) In the case of specialized care units proposing to treat ventilator dependent residents, the facility shall provide staffing for the nursing unit on which the ventilator beds are located that includes the 24 hour per day presence on the unit of at least one registered nurse and the 24 hour per day on-call availability of at least one respiratory therapist. In addition, the facility shall comply with licensure staffing requirements that are applicable to the care of ventilator-dependent residents.

(i) The minimum desired annual occupancy rate for specialized care units shall be 85 percent.

(j) In cases where there are two or more competing applications for specialized long-term care beds in the same health systems area, the prioritization criteria contained in N.J.A.C. 8:33H-1.19(e) shall be used in determining which applications should be approved or denied.

Amended by R.2004 d.354, effective September 20, 2004.
See: 36 N.J.R. 1641(a), 36 N.J.R. 4603(a).

Substituted references to "residents" for references to "patients" and references to "planning" for references to "LAB" throughout.