

**CHAPTER 33M**  
**CERTIFICATE OF NEED: REHABILITATION**  
**HOSPITALS AND COMPREHENSIVE**  
**REHABILITATION SERVICES**

**Authority**

N.J.S.A. 26:2H-5 and 26:2H-8.

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R.2001 d.105, effective March 1, 2001.  
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**Executive Order No. 66(1978) Expiration Date**

Chapter 33M, Certificate of Need: Rehabilitation Hospitals and Comprehensive Rehabilitation Services, expires on March 1, 2006.

**Chapter Historical Note**

Chapter 33M, Certificate of Need: Rehabilitation Hospitals and Comprehensive Rehabilitation Services, was adopted as new rules by R.1998 d.431, effective August 17, 1998. See: 30 N.J.R. 1529(a), 30 N.J.R. 3082(a).

Pursuant to Executive Order No. 66(1978), Chapter 33M, Certificate of Need: Rehabilitation Hospitals and Comprehensive Rehabilitation Services, was readopted as R.2001 d.105, effective March 1, 2001. See: Source and Effective Date.

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**8:33M-1.1 Scope and purpose**

(a) The Department of Health and Senior Services is "designated as the sole agency in this State for comprehensive health planning" (N.J.S.A. 26:2H-1). The Health Care Facilities Planning Act stipulates that "no health care facility shall be constructed or expanded, and no new health care services shall be instituted . . . except upon application for and receipt of a certificate of need" (N.J.S.A. 26:2H-7). Consequently, the rules contained in this chapter specify the

certificate of need requirements for all new rehabilitation hospitals and for all existing rehabilitation hospitals proposing to alter their licensed bed complements.

(b) A rehabilitation hospital may be either a freestanding inpatient health care facility or one or more separate and distinct inpatient units within a health care facility that is licensed by the Department of Health and Senior Services to provide comprehensive rehabilitation services, as defined in N.J.A.C. 8:33M-1.2. The facility shall provide both inpatient and outpatient rehabilitation services. The coordinated, multidisciplinary services provided in rehabilitation hospitals shall be aimed at ameliorating the effects of disabilities by maximizing individual and family functional capacities for independent, productive living.

(c) Comprehensive rehabilitation and inpatient rehabilitation services which are promoted or advertised as being comprehensive in nature shall be provided exclusively in health care facilities licensed by the Department of Health and Senior Services as rehabilitation hospitals. Only rehabilitation hospitals so licensed shall bill patients and third party payers for inpatient rehabilitation services which are promoted or advertised as being comprehensive in nature.

(d) In the case of health care facilities that provide comprehensive rehabilitation as well as other types of health care services, only those beds located in separate and distinct units used exclusively for comprehensive rehabilitation shall be counted as part of the facility's rehabilitation hospital license.

(e) Any providers seeking to alter their licensed complement of comprehensive rehabilitation beds or any other providers proposing to establish services that will meet the licensure requirements for comprehensive rehabilitation contained in N.J.A.C. 8:43H shall obtain certificate of need approval, in accordance with the rules contained in this chapter.

**8:33M-1.2 Definitions**

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

"Applicant" means the applicant for a certificate of need for comprehensive rehabilitation services.

"Comprehensive rehabilitation" means an intensive, multidisciplinary program of inpatient care designed to restore a disabled person to the highest attainable level of functioning and to provide new skills for successful adaptation to long-term impairments, offered primarily to patients who have recently experienced disability due to a congenital defect, acute illness or injury, or the exacerbation of a chronic illness or injury. Patients admitted to comprehensive rehabilitation programs are screened to assure that their treat-

ment in the facility will result in demonstrably increased functional abilities and an improved quality of life after discharge from the institution, to an extent that would not generally be possible with treatment available from other types of health care facilities.

“Comprehensive rehabilitation agency” means an ambulatory care facility which provides at least medical, physical therapy, and social or psychological services in a coordinated manner.

“Department” means the New Jersey State Department of Health and Senior Services.

“Environmental modification services” means a planned process of evaluation and adaptation of a patient’s living environment as may be needed to permit maximum independent functioning.

“Freestanding rehabilitation hospital” means a facility that carries its own separate license from the Department of Health and Senior Services for comprehensive rehabilitation beds.

“Medicaid patient” means a patient whose care is paid for by Medicaid.

“Medically underserved” means segments of the population whose utilization of health care services is less than those numbers approximately proportionate to their presence in the population as adjusted to account for their need for such services. Medically underserved includes, but is not limited to, racial and ethnic minority populations, migrant workers, the handicapped, Medicaid recipients, and the medically indigent, defined as those individuals lacking third party insurance coverage whose income is less than or equal to 200 percent of the United States Department of Health and Human Services Income Poverty Guidelines, 42 U.S.C. 9902(2).

“Multidisciplinary program” means a collaborative, integrated process whereby health professionals from a variety of disciplines assess individual patients and work together as a team to establish each patient’s plan of care and goals for that care. The team meets on a regular basis to review patients’ progress, to modify goals as necessary, and to assure that patients’ needs are being met. Members of the team either provide care directly to patients in accordance with their treatment plans, or are responsible for supervising other health care workers who provide such care.

“Physiatrist” means a physician who is either certified or eligible for certification by the American Board of Physical Medicine and Rehabilitation or by the American Osteopathic Board of Rehabilitation Medicine.

## SUBCHAPTER 2. REQUIREMENTS

### 8:33M-2.1 Relationship between licensure and certificate of need requirements

The provisions of N.J.A.C. 8:43H, the Manual of Standards for Licensure of Comprehensive Rehabilitation Hospitals, are hereby incorporated by reference. Applicants receiving certificate of need approval for comprehensive rehabilitation beds shall comply with all applicable requirements of N.J.A.C. 8:43H.

### 8:33M-2.2 Facility personnel and service requirements

(a) Applicants shall document that they will provide services in such numbers and types to adequately meet the needs of the patient population. These services may be provided by staff employed directly by the facility or through contractual arrangements with other agencies or facilities. At a minimum, the rehabilitation hospital shall provide the following services, on both an inpatient and an outpatient basis, at the facility: audiology, dental, dietary, driver evaluation, environmental modification, laboratory, medical, nursing, nutritional counseling, occupational therapy, orthotic and prosthetic, pharmaceutical, physiatry, physical therapy, psychological, radiological, recreational therapy, respiratory therapy, sexual counseling, social work, speech-language pathology, and vocational testing and counseling.

(b) The applicant shall describe, to the satisfaction of the Department of Health and Senior Services, how the multidisciplinary program will be organized. This shall include an identification of personnel who will be included on the team, as well as members’ roles and responsibilities. The applicant shall document how the multidisciplinary team will promote coordination of care for patients.

(c) The applicant shall document that combined rehabilitative therapies, excluding nursing care and physician services and including physical therapy and occupation therapy and/or speech therapy, shall be provided for a minimum of three hours per patient per day, five days per week. In the case of pediatric rehabilitation hospitals, applicants shall document that combined rehabilitative therapies, including nursing care and physician services and including at least two out of four modalities (that is, physical, occupational, speech, and/or respiratory therapies), shall be provided for a minimum of three hours per patient per day, five days per week.

(d) The applicant shall provide documentation that the comprehensive rehabilitation program for adult patients will be under the direction of a full-time, Board-certified physiatrist. If the comprehensive rehabilitation program is intended to treat pediatric patients, the applicant shall provide documentation that the program will be under the direction of a full-time, Board-certified pediatrician, with a physiatrist available to all patients as needed. Medical staffing at a proposed rehabilitation hospital shall include, at a minimum, one full-time equivalent physiatrist per 20 adult patients. For pediatric patients, the proposed rehabilitation hospital shall be staffed, at a minimum, with one full-time equivalent pediatrician per 20 patients.

(e) Applicants shall describe nurse staffing patterns which shall include, at a minimum, one registered nurse on each nursing care unit, 24 hours per day. Priority shall be given to approving applications that provide documentation of a commitment to promoting high quality, specialized rehabilitation nursing. Applicants shall submit a detailed, specific plan for the recruitment, retention, and inservice education of nursing staff, including a description of any incentives that shall be provided by the hospital for the purpose of encouraging the facility's registered nurses to earn master's degrees from programs accredited by the National League of Nursing and/or to receive certification from the Association of Rehabilitation Nurses (or, in the case of pediatric facilities, from the National Board of Pediatric Nurse Practitioners and Associates or the American Nurses Association).

### 8:33M-2.3 Minimum size of facilities

(a) To promote the efficient use of resources, the minimum size for a new, freestanding rehabilitation hospital shall be 60 beds.

(b) The minimum size for a non-freestanding rehabilitation hospital that is located within another type of licensed health care facility shall be 30 beds.

1. An exception to the 30 bed minimum size for a non-freestanding rehabilitation hospital will be made by the Department, under the following circumstance, provided that all other applicable requirements of this chapter are met:

i. An existing, non-freestanding rehabilitation hospital proposes renovations or improvements in its physical plant that are necessary to meet minimum State and Federal Life Safety Code requirements and no change in the rehabilitation hospital's bed complement is proposed or necessary; or

ii. In regions where there is a need for fewer than 30 adult or pediatric rehabilitation beds, as documented by the need methodologies described in N.J.A.C. 8:33M-2.4(c), the Department of Health and Senior Services may give consideration to approving applications that will improve access to high quality, cost efficient comprehensive rehabilitation services. Under no circumstance shall an application proposing a total complement of fewer than 20 comprehensive rehabilitation beds for either pediatric or adult patients be approved.

(c) Rehabilitation hospitals proposing to treat both pediatric and adult patients shall include a minimum of 30 beds for pediatric patients and 30 beds for adult patients, unless an exception is granted for a smaller number of pediatric or adult beds, as described above in (b)1ii above. Pediatric and adult rehabilitation beds shall not be combined to achieve the minimum bed complement.

### 8:33M-2.4 Requirements for expansion and new construction

(a) Certificate of need applications for new rehabilitation hospitals or for bed additions to existing rehabilitation hospitals shall be filed for full review with the Department in accordance with the provisions of N.J.A.C. 8:33, the Certificate of Need Policy Manual, in response to a call for applications which is issued by the Commissioner (see N.J.A.C. 8:33-4.1).

(b) To promote the efficient provision of comprehensive rehabilitation, these services shall be provided by rehabilitation hospitals on a regional basis. The applicant shall therefore identify the proposed region for any new or expanding rehabilitation hospital and shall provide documentation of how the facility will assure access to comprehensive rehabilitation for the population residing throughout that region.

1. For certificate of need purposes, the regional service area proposed by an applicant shall be one of the following:

i. Region I: Passaic, Morris, Sussex, Hunterdon, Mercer, Middlesex, Somerset and Warren Counties;

ii. Region II: Bergen, Essex, Union and Hudson Counties;

iii. Region III: Burlington, Camden, Cumberland, Gloucester, Atlantic, Cape May, Monmouth, Ocean and Salem Counties;

(c) New comprehensive rehabilitation beds shall be approved only in regions where there is a documented projected bed need.

1. Need projections shall be computed for that year which is four years from the time that a certificate of need application is accepted for processing.

2. For the purpose of computing bed need, the Department shall maintain separate inventories of approved pediatric and adult comprehensive rehabilitation beds for each region identified in (b) above, and these beds shall be subtracted from the projected number of beds needed in each respective region. Approved comprehensive rehabilitation beds shall include those that are authorized and licensed as described in N.J.A.C. 8:33M-1.1(e) and all comprehensive rehabilitation beds that receive certificate of need approval.

3. Need projections shall be computed using the most recent available data from licensed rehabilitation hospitals, both freestanding and non-freestanding, in accordance with N.J.A.C. 8:33M-1.1(b), and the New Jersey Department of Labor (population projections).

i. Rehabilitation hospitals, both freestanding and non-freestanding, shall submit utilization data to the Department of Health and Senior Services for each calendar year on an annual basis, or more frequently if requested by the Department of Health and Senior

Services. Data shall include a breakdown of the number of patients and patient days for the reporting period, according to the age and county of residence of patients.

ii. In the event that a licensed rehabilitation hospital does not provide the utilization data in (c)3i above in a timely manner, as directly specified by the Department, the Department shall exclude that facility's beds from the inventory used in calculating Statewide utilization rates and bed need for the region.

4. The need for adult comprehensive rehabilitation beds shall be calculated in the following manner, using New Jersey Department of Labor demographic statistics.

i. STEP 1: For each county, for the age groups 20 to 44, 45 to 64, 65 to 74, and 75 and over, the number of county residents who actually occupied licensed comprehensive rehabilitation beds in facilities located in New Jersey during the time period for which the most recent data are available shall be divided by the concurrent, age-specific population of the respective county;

ii. STEP 2: For the State as a whole, for the age groups 20 to 44, 45 to 64, 65 to 74, and 75 and over, the total number of New Jersey residents who actually occupied licensed comprehensive rehabilitation beds in facilities located in New Jersey shall be divided by the total population for the specified age groups for the concurrent year;

iii. STEP 3: A minimum acceptable rate of patients per population shall be set for each group identified in (c)4i above. The set minimum figure shall be that rate which is 20 percent less than the Statewide average rate computed for each age group, in accordance with (c)4ii above;

iv. STEP 4: In order to project the number of patients expected to need inpatient comprehensive rehabilitation care in the target year, the rate of patients for each age group for each county, as computed in (c)4i above, shall be multiplied by the age-specific, county-specific population that is projected for the target year. However, if the age-specific, county-specific rate of comprehensive rehabilitation bed utilization computed in accordance with (c)4i above is below the applicable minimum rate computed in accordance with (c)4iii above, then this minimum acceptable rate shall be substituted for the actual age-specific, county-specific rate;

v. STEP 5: Using the most recent data available to the Department of Health, the Statewide average length of stay in licensed comprehensive rehabilitation beds for the age groups 20 to 44, 45 to 64, 65 to 74, and 75 and over, shall be computed by dividing the total number of New Jersey comprehensive rehabilitation patient days utilized by each age group during the reporting period in question by the total number of New Jersey rehabilitation patients for each respective age group;

vi. STEP 6: In order to project the number of patient days expected in the target year, the age-specific, county-specific projected number of patients computed in accordance with (c)4iv above shall be multiplied by the age-specific, Statewide average length of stay computed in accordance with (c)4v above;

vii. STEP 7: The projected number of patient days for all age groups, computed in accordance with (c)4vi above, shall be summed for each county. In order to allow for 85 percent occupancy of comprehensive rehabilitation beds in the target year, the projected number of patient days for each county shall then be divided by 0.85;

viii. STEP 8: The projected number of patient days for each county, computed in accordance with (c)4vii above, shall be divided by 365 to yield the projected number of comprehensive rehabilitation beds needed by county residents in the target year. The projected number of beds needed by each region shall then be computed by summing the number of comprehensive rehabilitation beds required for each of the counties in that region;

ix. STEP 9: In order to take into account those comprehensive rehabilitation beds in New Jersey rehabilitation hospitals which are utilized by non-New Jersey residents and by patients whose residency is unknown, the number of patient days utilized by non-New Jersey residents and by patients of unknown origin at all rehabilitation hospitals located in each region during the most recent year for which data are available shall be summed. The latter number, computed for each region, shall then be divided by  $(365 \times .85)$ . The resulting, region-specific number of beds shall then be added to the number of beds needed in each particular region, computed in accordance with (c)4viii above; and

x. STEP 10: To arrive at the net number of beds needed in each local advisory board region in the target year, the inventory of approved comprehensive rehabilitation beds in each region, determined in accordance with (c)2 above, shall be subtracted from the respective region's bed need, computed in accordance with (c)4viii and ix above.



(g) Applicants shall submit a copy of proposed educational program materials pertaining to the care of HIV-infected patients, including documentation regarding how universal precautions (see N.J.A.C. 8:39-19.4(a)1) shall be instituted in the proposed or existing rehabilitation hospital, to be used in training all health care staff. In addition, the applicant shall agree, as a condition of certificate of need approval, to enter into and maintain a formal affiliation with the Department's AIDS Division to assure follow-up and case management of patients who may be HIV-infected.

(h) The applicant's prior record of providing quality care, as determined by the Department's Division of Health Facilities Evaluation, shall be taken into consideration during the certificate of need review. Applicants with a record of licensure violations or deficiencies pertaining to patient care during the 12-month period prior to submission of the certificate of need application shall not be approved for bed additions nor for the construction of new rehabilitation hospitals.

Amended by R.2000 d.256, effective June 19, 2000.  
See: 32 N.J.R. 424(a), 32 N.J.R. 2237(a).  
Inserted (b)1.

#### 8:33M-2.5 Patient admission and discharge policies

(a) Admission criteria and policies shall be developed by the facility and submitted as part of the certificate of need application. Patients in non-freestanding facilities shall be admitted separately into the rehabilitation hospital for statistical and cost accountability purposes.

(b) Admission policies shall be in writing, and shall, at a minimum, address each of the following:

1. Patient eligibility characteristics or factors specific to recognized rehabilitation diagnoses/conditions that will be treated at the facility. These diagnoses/conditions shall be consistent with the scope and intensity of services that the facility intends to provide;

2. Screening to assure that treatment in the facility will result in demonstrably increased functional abilities and an improved quality of life after discharge from the institution, to an extent that would not generally be possible with treatment available from other types of health care facilities. Only patients who are capable of engaging in and benefiting from this level of treatment shall be admitted;

3. Nondiscrimination against patients on the basis of payment sources for care;

4. Nondiscrimination against patients who are known to be, or who are suspected of being, HIV-positive. As a condition of certificate of need approval, the facility shall agree to treat patients who meet the admission criteria for the facility and are HIV-positive; and

5. For those individuals who are deemed ineligible for admission to the facility, a description of how patients will be recommended for a more appropriate level of care.

(c) Discharge criteria shall be developed by the applicant and included as a part of the certificate of need application.

(d) The applicant shall submit documentation of a plan to provide job placement opportunities and referrals for those patients who desire employment after discharge from the facility.

(e) For each patient who is discharged from the hospital, the facility shall collect, and shall report annually to the Department of Health and Senior Services, the following data: patient's age, county of residence, referral source, length of stay, principal, and secondary diagnoses, functional impairments on admission and discharge, payment source, discharge status and destination, and post-discharge service needs.

(f) The applicant shall submit documentation of the referral process that will be implemented to assure that patients will receive appropriate follow-up care after discharge from the facility. The facility shall establish and maintain a plan to assure that needed outpatient services will be arranged for patients residing within each county in the facility's service area.

#### 8:33M-2.6 Accessibility of care for Medicaid, Medicare, and medically indigent patients

(a) On an annual basis, a minimum of five percent of the total patient days within a facility's adult comprehensive rehabilitation beds shall be utilized by Medicaid patients. This requirement shall be met within one year of license issuance for a rehabilitation hospital and shall be maintained thereafter.

(b) On an annual basis, a minimum of 35 percent of the total patient days within a facility's adult comprehensive rehabilitation beds shall be utilized by Medicare patients. This requirement shall be met within one year of project completion and/or license issuance for a rehabilitation hospital and shall be maintained thereafter.

(c) On an annual basis, a minimum of 40 percent of the total patient days within a facility's pediatric comprehensive rehabilitation beds shall be utilized by Medicaid-eligible patients. This requirement shall be met within one year of project completion and/or license issuance for a rehabilitation hospital and shall be maintained thereafter.

(d) On an annual basis, a minimum of three percent of the total patient days within a facility's comprehensive rehabilitation beds shall be provided in the form of free and/or part-pay care to medically indigent patients. This requirement shall be met within one year of project completion and/or license issuance for a rehabilitation hospital and shall be maintained thereafter.

(e) The applicant shall provide documentation that written policies shall be maintained and enforced by the facility, stating that no patient will be discharged prior to completion of treatment as a result of the inability to pay for care.

(f) The Department shall give priority to the approval of certificate of need applications for rehabilitation hospitals that have at least a three year prior history of complying with the applicable requirements specified in (a), (b) and (c) above.

(g) The applicant for a certificate of need shall provide documentation, to the satisfaction of the Department of Health and Senior Services, of strategies that will be implemented by the rehabilitation hospital in order to promote and assure access to care for Medicaid-eligible patients who reside throughout the facility's service region.

#### **8:33M-2.7 Financial feasibility and cost effectiveness**

(a) Applicants for a certificate of need shall demonstrate the financial feasibility of proposed projects. A study shall be submitted by the applicant analyzing the feasibility of the project under the reimbursement rules in effect at the time of the CN call. A project may be determined financially feasible where the applicant can demonstrate to the satisfaction of the Department that there will be a net positive income in the calendar or fiscal years that are two and five years beyond project completion. The Department will use, at a minimum, the following factors in determining financial feasibility:

1. Project cost;
2. Projected budget; and
3. Positive income (that is, income exceeding expenses).

(b) Financial projections submitted as part of the certificate of need application shall provide evidence that income generated by operation of the proposed facility will be sufficient to cover the cost of service to the percentage of Medicaid, Medicare, and medically indigent patients specified in the application, or in accordance with N.J.A.C. 8:33M-2.5, whichever amount is greater.

(c) Financing of hospital construction, modernization/renovation, or major movable equipment projects shall require that at least 15 percent of the total project costs, including all financing and carrying costs, shall be available and

applied in the form of equity, in accordance with N.J.A.C. 8:33-2.15.

(d) All projects involving long-term financing of capital construction costs shall demonstrate use of the least costly form of financing available.

(e) An applicant for a certificate of need for additional comprehensive rehabilitation beds shall submit documentation that appropriate alternatives to inpatient care which could minimize the ALOs such as home health care or outpatient services, have been considered and that the project as proposed will encourage the use of lower cost outpatient rehabilitative services, where such services are appropriate to meet patients' needs for care.

(f) Applicants for comprehensive rehabilitation beds that are proposed to be located within long-term care facilities shall submit projected fee schedules for rehabilitation services and for long-term care services at the facility. Applications that propose a schedule of charges indicating that costs will be shifted from comprehensive rehabilitation patients to long-term care patients shall not be approved.

#### **8:33M-2.8 Geographical accessibility of facilities and siting considerations**

(a) In service areas where there is a need for additional comprehensive rehabilitation beds, priority shall be given to approving applications in areas that will improve geographical accessibility for residents of the region. The evaluation of geographical accessibility shall include, but not be limited to, a consideration of the location of existing rehabilitation hospitals, population density of the service area, and driving time to existing and proposed rehabilitation hospitals in the service area.

(b) Where possible, each rehabilitation hospital shall be located in close proximity to public transportation routes.

(c) Documentation of the zoning status and the need for land use approvals for any site proposed for new construction shall be submitted by the applicant. Priority shall be given to the approval of certificate of need applications for projects located on sites that are likely to receive necessary zoning and land use approvals.