

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.

Public Notice: Certificate of Need and Acute Care Licensure.

See: 36 N.J.R. 4996(b).

Amended by R.2007 d.387, effective December 17, 2007.

See: 39 N.J.R. 3462(a), 39 N.J.R. 5316(b).

Added new (e); and recodified former (e) as (f).

Amended by R.2011 d.199, effective August 1, 2011.

See: 43 N.J.R. 801(a), 43 N.J.R. 1866(b).

In the introductory paragraph of (e)3, and in (e)3i and (e)3ii, substituted "registry" for "trial" following "C-PORT-E" throughout; in the introductory paragraph of (e)3, substituted "that extends for nine months following the publication of the trial results in a peer-reviewed journal" for "of no more than three years, not counting any intervening lapse in enrollment associated with the pendency of litigation described at *Cooper University Hospital v. Jacobs*, 191 N.J. 125 (2007)" and "entered" for "enrolled", and deleted "three-year" preceding the second occurrence of "period"; in (e)3i, substituted "entry in the registry" for "enrollment"; added (e)3iii; in (e)5i, inserted "or entered" and "or registry"; in (e)5ii, inserted "or registry" twice; rewrote (e)5iii; and in (e)5v, inserted "and registry".

Amended by R.2013 d.127, effective October 21, 2013.

See: 45 N.J.R. 191(a), 45 N.J.R. 2330(c).

Rewrote the introductory paragraph of (e)3; in (e)3i, inserted "through licensure"; in (e)3ii, inserted "and license"; and rewrote (e)5ii through (e)5iv.

Amended by R.2015 d.115, effective August 17, 2015.

See: 47 N.J.R. 319(a), 47 N.J.R. 2063(a).

Deleted former (c) through (e); added new (c), and recodified (f) as (d).

Case Notes

Although N.J.A.C. 8:33-3.11(e) authorized a call made by the Commissioner of the Department of Health and Senior Services that invited health care facilities without a cardiac surgery facility on site to apply for a certificate of need to conduct elective angioplasty, the regulation, as applied, violated fundamental principles relating to the regulatory process; as a result, certificates of need granted for demonstration projects were not sustainable and the projects were directed to continue only through November 30, 2007, and the Commissioner was directed to promulgate proper regulations, after appropriate adherence to the principles of rulemaking, before any such demonstration project could be continued. *Cooper Univ. Hosp. v. Jacobs*, 191 N.J. 125, 922 A.2d 731, 2007 N.J. LEXIS 600 (2007).

SUBCHAPTER 4. THE REVIEW PROCESS

8:33-4.1 Review cycles and submission dates

(a) The full review process involves the review of a certificate of need application by the State Health Planning Board, as well as the Department. The Commissioner shall publish in the New Jersey Register in February of each year an anticipated schedule for receipt of certificate of need applications subject to full review procedures for a two-year period, including the current calendar year. The Commissioner may announce additional or special calls for certificate of need applications beyond those identified in the yearly notice or may delete announced calls from the yearly notice. Changes to the published schedule shall be published in the New Jersey Register. Wherever practical, the Commissioner shall provide notice in accordance with this section to allow for a minimum of 90 days between the date of publication of the Commissioner's notice inviting certificate of need applications and the date for submission of applications in response to the no-

tice(s). The notice shall identify the needed service(s), proposed geographic area(s) to be served, the date the application is due, and the date the application is deemed complete for processing. The State Health Planning Board shall forward recommendations to the Commissioner within 90 days after the application is deemed complete for processing unless a fair hearing is requested by an applicant in accordance with the procedures identified at N.J.A.C. 8:33-4.14. For batches with fewer than 20 applications, a final agency decision will be rendered by the Commissioner no later than 120 days after receipt of recommendations from the State Health Planning Board or a decision from the Office of Administrative Law, as applicable. For batches with 20 or more applications, a final agency decision will be rendered by the Commissioner no later than 180 days after receipt of recommendations from the State Health Planning Board or a decision from the Office of Administrative Law, as applicable.

1. The full review process for non-batched applications shall include 12 review cycles. The beginning of each cycle shall be the first business day of each month.

2. The full review process for batched applications shall be in accordance with the following schedule, except that if the first of the month the application is due falls on a Saturday, Sunday, or State holiday, the application shall be filed the first business day of the month in which the application is due:

<u>Category</u>	<u>Deadline for Submission</u>
Long-term care, specialized ventilator	1/2/03 and annually thereafter
Long-term care, specialized behavior modification	1/2/03 "
Long-term care, pediatric	1/2/03 "
Maternal and child health	1/2/03 "
Pediatric intensive care	9/1/02 "
Psychiatric beds	2/1/03 and every two years thereafter
Rehabilitation beds	3/1/03 "
Children's hospitals	4/1/04 and every three years thereafter
Transplantation	4/1/04 "
Mobile intensive care unit	6/1/04 "
Trauma	6/1/04 "
Long-term care, general	7/1/04 "
Home health	7/1/04 "
Burn center, program, unit	4/1/06 and every five years thereafter
New general hospitals	4/1/06 "

3. Acceptance of batched applications submitted in accordance with the schedule in (a)2 above does not constitute a finding by the Department of need for the additional beds or services proposed in the application(s).

4. For services with longer than annual submission schedules, the Commissioner may announce special calls for receipt of certificate of need batched applications upon making a finding of extraordinary circumstances that warrant such a call prior to the next scheduled submission date.

5. The Department shall review the schedule in (a)2 above for adequacy at least every five years.

6. New cardiac surgery services shall follow the procedures specified at N.J.A.C. 8:33E.

(b) The expedited review process involves review of a certificate of need application by the Department. It does not include a review by the State Health Planning Board. The expedited review process will include 12 review cycles. The beginning of each cycle shall be the first business day of each month and a decision the Commissioner shall render shall be rendered by the Commissioner no later than 90 days thereafter, unless otherwise specified by rule or notice.

(c) The Department shall conduct an annual review of the certificate of need application and review process to determine timeliness in processing certificate of need applications. Failure by the Department to process at least 90 percent of certificate of need applications filed within the year within the timeframes stated herein shall result in immediate corrective action.

Public Notice: Invitation for Certificate of Need Applications.
See: 24 N.J.R. 4426(b); 25 N.J.R. 2596(c); 25 N.J.R. 4520(b), 25 N.J.R. 4795(e).

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).

Public Notice: Invitation for Certificate of Need Applications.

See: 34 N.J.R. 2473(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.

Public Notice: Invitation for Certificate of Need Applications.

See: 34 N.J.R. 3991(b), 4226(a).

Public Notice: Certificate of Need and Acute Care Licensure.

See: 35 N.J.R. 277(a), 277(b).

Public Notice: Invitation for Certificate of Need Applications.

See: 35 N.J.R. 1739(c).

Public Notice: Certificate of Need: Application and Review Process.

See: 35 N.J.R. 4789(c), 5444(c).

Public Notice: Cancellation of Certificate of Need.

See: 36 N.J.R. 1834(a), 1835(a), 1835(c), 1836(a), 1836(b), 2263(a), 4997(a), 5460(a), 5460(b), 5460(c), 5460(d), 5461(a).

Public Notice: Cancellation of Certificate of Need Calls.

See: 37 N.J.R. 4580(a), 4580(b).

Public Notice: Invitation for Certificate of Need Applications.

See: 38 N.J.R. 1474(a), 1773(a).

Public Notice: Cancellation of Certificate of Need Calls.

See: 38 N.J.R. 5416(a).

Public Notice: Cancellation of Certificate of Need Calls.

See: 39 N.J.R. 802(a), 802(b), 802(c), 802(d), 803(a), 803(b), 803(c), 803(d), 804(a), 804(b).

Public Notice: Cancellation of Certificate of Need Calls.

See: 40 N.J.R. 6867(b).

Public Notice: Postponement of Certificate of Need Calls.

See: 40 N.J.R. 6868(a).

Public Notice: Cancellation of Certificate of Need Calls.

See: 41 N.J.R. 1521(a), 1521(b), 4564(a).

Public Notice: Postponement of Certificate of Need Calls.

See: 41 N.J.R. 4564(b).

Public Notice: Cancellation of Certificate of Need Calls.

See: 42 N.J.R. 1254(a), 1254(b), 1254(c), 1254(d), 1254(e), 1255(a), 1255(b).

Public Notice.

See: 43 N.J.R. 65(a), 65(b), 65(c), 66(a), 209(a), 452(a), 751(a), 1608(a).

Public Notice: Cancellation of Certificate of Need Calls.

See: 45 N.J.R. 70(a), 70(b), 70(c), 954(b), 954(c), 955(a), 2507(a), 2507(b).

Public Notice: Postponement of Certificate of Need Calls.

See: 45 N.J.R. 70(d), 2507(c).

Public Notice: Invitation for Certificate of Need Applications.

See: 46 N.J.R. 647(b).

Public Notice: Cancellation of Certificate of Need Calls.

See: 47 N.J.R. 232(a), 232(b), 232(c), 233(a), 2312(a).

Public Notice: Invitation for Certificate of Need Applications.

See: 48 N.J.R. 339(a).

Public Notice: Postponement of Certificate of Need Calls.

See: 48 N.J.R. 1332(a), 1332(b).

Case Notes

N.J.A.C. 8:33-4.1, with its regularized schedule allowing providers to submit certificate of need applications for maternal and child health needs, provided ample basis for the determination by the Commissioner of the New Jersey Department of Health and Senior Services to accept and process a hospital's application seeking a change in classification to a regional perinatal center, even though the published call notice did not include an explicit reference to a "change in designation." In re Virtua-West Jersey Hosp. Voorhees, 194 N.J. 413, 945 A.2d 692, 2008 N.J. LEXIS 410 (2008).

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).

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.

8:33-4.2 Development of applications

(a) Application for a certificate of need shall be made to the Department, in accordance with the requirements of this chapter, and shall be in such form and contain such information as the Department may prescribe.

(b) The certificate of need application forms are available through the following methods:

1. Electronically at the Department's "Forms" webpage at <http://nj.gov/health/forms>;
2. Attached at the end of this chapter as Appendices B through E, which are incorporated herein by reference;
3. Upon written request to:

Director
Office of Certificate of Need and Healthcare
Facility Licensure
New Jersey Department of Health and Senior
Services
PO Box 358
Trenton, New Jersey 08625-0358

(c) Before filing an application, applicants are encouraged to contact the Department to examine the relationship of the proposed project to the applicable plans, guidelines, and criteria.

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

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

Rewrote (b) and deleted (c).

Amended by R.2008 d.23, effective January 22, 2008.

See: 39 N.J.R. 2709(a), 40 N.J.R. 620(b).

Added new (b); and recodified former (b) as (c).