

CHAPTER 33

**CERTIFICATE OF NEED:
APPLICATION AND REVIEW PROCESS**

Authority

N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Source and Effective Date

R.2008 d.23, effective December 21, 2007.
See: 39 N.J.R. 2709(a), 40 N.J.R. 620(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 33, Certificate of Need: Application and Review Process, expires on December 21, 2014. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 33, Certificate of Need, was adopted as R.1972 d.93, effective on May 11, 1972. See: 4 N.J.R. 25(a), 4 N.J.R. 124(a). Chapter 33 was amended by R.1975 d.315, effective December 1, 1975. See: 7 N.J.R. 362(a), 7 N.J.R. 503(a); R.1979 d.283, effective July 20, 1979. See: 11 N.J.R. 174(a), 11 N.J.R. 439(a); R.1980 d. 36, effective January 17, 1980. See: 11 N.J.R. 620(a), 12 N.J.R. 75(e); R.1980 d.123, effective March 20, 1980. See: 12 N.J.R. 73(d), 12 N.J.R. 186(c); R.1981 d.296, effective August 6, 1981. See: 13 N.J.R. 267(a), 13 N.J.R. 487(b); and R.1983 d.205, effective June 6, 1983. See: 15 N.J.R. 307(b), 15 N.J.R. 920(c).

Pursuant to Executive Order No. 66(1978), Chapter 33 was readopted as R.1983 d.604, effective December 14, 1983. See: 15 N.J.R. 1708(b), 16 N.J.R. 48(a). Chapter 33 was repealed and a new Chapter 33, Certificate of Need: Application and Review, was adopted as R.1985 d.498, effective October 7, 1985. See: 17 N.J.R. 1190(a), 17 N.J.R. 2402(a).

Pursuant to Executive Order No. 66(1978), Chapter 33, Certificate of Need: Application and Review, was readopted as R.1990 d.417, effective July 27, 1990. See: 22 N.J.R. 1494(a), 22 N.J.R. 2506(a).

Subchapters 1 through 4 were repealed and a new Subchapter 1, General Provisions; Subchapter 2, Applicability of Certificate of Need Requirements; Subchapter 3, Types of Certificate of Need Applications; Subchapter 4, The Review Process; and Subchapter 5, Expedited Review Process, were adopted as new rules by R.1992 d.342, effective September 8, 1992. See: 24 N.J.R. 2222(a), 24 N.J.R. 3104(a). As a part of R.1992 d.342, Section 5.1 was recodified as 6.1.

Subchapter 6, Certificate of Need Moratorium, was repealed and a new Subchapter 6, Certificate of Need Exemptions, was adopted as new rules by R.1993 d.442, effective September 7, 1993. See: 25 N.J.R. 2171(a), 25 N.J.R. 4129(a).

Subchapter 7, Direct Review Process, was adopted as R.1996 d.101, effective February 20, 1996. See: 27 N.J.R. 4179(a), 28 N.J.R. 1228(a).

Pursuant to Executive Order No. 66(1978), Chapter 33, Certificate of Need: Application and Review, expired on September 8, 1997.

Chapter 33, Certificate of Need: Application and Review Process, consisting of 8:33-1.3, 8:33-3.11 and 8:33-5.1, was originally adopted as new rules by R.1998 d.278, effective June 1, 1998. See: 30 N.J.R. 1005(a), 30 N.J.R. 1991(a). The balance of the chapter was adopted as new rules by R.1998 d.303, effective June 15, 1998. See: 30 N.J.R. 303(a), 30 N.J.R. 2270(b).

Chapter 33, Certificate of Need: Application and Review Process, was readopted as R.2002 d.243, effective July 3, 2002. As a part of R.2002 d.243, Subchapter 7, Direct Review Process, was repealed, effective August 5, 2002. See: 34 N.J.R. 458(a), 34 N.J.R. 1246(a), 34 N.J.R. 2814(a).

Chapter 33, Certificate of Need: Application and Review Process, was readopted as R.2008 d.23, effective December 21, 2007. As a part of R.2008 d.23, the existing Appendix to Chapter 33 was renamed Appendix A, effective January 22, 2008. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

8:33-1.1 Purpose and scope

(a) The purpose of these rules is to implement the provisions of the Health Care Facilities Planning Act, P.L. 1971, c.136, as amended by P.L. 1978, c.83, the Health Care Cost Reduction Act, P.L. 1991, c.187, the Health Care Reform Act, P.L. 1992, c.160, and the Certificate of Need Reform Act, P.L. 1998, c.43. These rules may be amended as necessary, in accordance with N.J.S.A. 52:14B-1 et seq., the Administrative Procedure Act, and N.J.A.C. 1:30, Rules for Agency Rulemaking, to best implement the statutory provisions and to reflect changing economic and systemic conditions within the health care system.

(b) These rules apply to the initiation, construction and/or expansion of all health care facilities and services as identified in the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq. and/or Appendix Exhibits 1 through 4 of this chapter, incorporated herein by reference. Applicants for certificates of need are advised that the policies, standards, and criteria set forth in this chapter are in addition to, and not in limitation of, any other applicable certificate of need authorities, specifically including, but not limited to, those in N.J.S.A. 26:2H-1 et seq., the service-specific health planning rules, any applicable licensing authorities, or any specific conditions imposed upon facilities or services by the Commissioner in their particular certificate of need approvals.

(c) All inquiries regarding certificate of need matters should be directed to:

Office of Certificate of Need and Healthcare
Facility Licensure
New Jersey State Department of Health and
Senior Services
PO Box 358
Trenton, New Jersey 08625-0358
(609) 292-6552 and 292-7228

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, “,” and the Certificate of Need Reform Act, P.L. 1998, c.43” following “1992, c.160” and “Rules for” following “N.J.A.C. 1:30”; in (b), inserted “3” for “4” in Exhibits; in (c), substituted “Room 403” for “Room 604” and added a phone number; deleted (d).
Amended by R.2008 d.23, effective January 22, 2008.
See: 39 N.J.R. 2709(a), 40 N.J.R. 620(b).

In the address in (c), substituted “Office of Certificate of Need and Healthcare Facility Licensure” for “Certificate of Need and Acute Care Licensure Program” and “358” for “360, Room 403”, deleted “Health-Agriculture Building” and “John Fitch Plaza” preceding “Trenton” and substituted “0358” for “0360”.

8:33-1.2 General statements of public policy and rules of general application

(a) It is the public policy of the State that access to health care services of the highest quality are of vital concern to the public health. Recognizing the significant changes in the economics of the health care system since the inception of the certificate of need program, decisions as to most health care

services, acquisition of medical technology, and expansion of facilities can best be made by the health care provider. The appropriate role of the State with respect to services no longer subject to certificate of need is that of licensure of facilities and services to ensure the quality of care. For reasons of maintaining the quality of certain health care services, a limitation of the proliferation of such services may continue to be essential to protect the viability of the services as well as the providers now rendering them, to protect the role of such institutions as urban hospitals, whose importance to the State-wide health care system is indisputable, and to guard against the closing of important facilities and the transfer of services from facilities in a manner which is harmful to the public interest. Pursuant to N.J.S.A. 26:2H-1, to protect and promote the health of the inhabitants of the State, the Department shall have the central, comprehensive responsibility for the development and administration of the State’s policy with respect to health planning for all such health care facilities and services. Based on the particular needs of the State, this plan may include limiting the proliferation of certain health care services to preserve the viability of existing providers and urban hospitals, which play a vital role in the Statewide health care delivery system. The Department also must guard against the closing of important institutions and the transfer of services from facilities in a manner that is harmful to the public interest. All such health care facilities and services shall be subject to the provisions established herein.

(b) The Commissioner, to implement the provisions and purposes stated above, shall have the power to inquire into the accessibility to and availability of health care services and the operation of health care facilities and to conduct periodic inspections of such facilities with respect to the fitness and adequacy of the premises, equipment, personnel, rules and bylaws and the adequacy of financial resources and resources of future revenues.

(c) No certificates of need shall be issued unless the action proposed in the application for such certificate is necessary to provide required health care in the area(s) to be served, can be financially accomplished and maintained, licensed in accordance with applicable licensure regulations, will not have an adverse economic or financial impact on the delivery of or access to health care services in the region or Statewide, and will contribute to the orderly development of adequate and effective health care services. In making such determinations there shall be taken into consideration the availability of facilities or services which serve as alternatives or substitutes, the need for special equipment and services in the area, the adequacy of financial resources and sources of present and future revenues, the availability of sufficient human resources in the several professional disciplines, the accessibility to and availability of health care services to low income persons, and such other factors as may be established by regulation. In the case of an application by a health care facility established or operated by any recognized religious body or denomination, the needs of the members of such religious body or denomination for care and treatment in accordance with their reli-