

9. The local advisory board shall notify the Commissioner and the State Health Planning Board of its recommendations by submission of the following information to the Department:

- i. A summary form established by the Department which includes the local advisory board voting summary and specific reasons for decisions;
- ii. A summary and review matrix;
- iii. A summary of public comments for each application, which shall list specific commentors and their affiliation(s) and shall summarize their comments (including criticisms and support); and
- iv. A full transcript of the public hearing to the Department upon request.

(e) The following activities shall not be the responsibility of the local advisory boards:

- 1. Involvement in architectural plans review of approved projects;
- 2. Monitoring of the construction of approved projects;
- 3. Determining compliance with Departmental licensure requirements; or
- 4. Evaluating the character and competence of the applicant, based upon State licensure, survey records, or other information of State regulatory agencies.

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).

Case Notes

Health Commissioner has obligation to provide fuller explanation for rejecting appraisals than mere statement that prioritization criteria outweigh recommendations. In re Certificate of Need Application of Arnold Walter Nursing Home, 277 N.J.Super. 472, 649 A.2d 1319 (A.D.1994).

There is right to "on the merits" assessment of competing proposals. In re Certificate of Need Application of Arnold Walter Nursing Home, 277 N.J.Super. 472, 649 A.2d 1319 (A.D.1994).

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

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

(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.

(d) 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 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.

Amended by R.1993 d.442, effective September 7, 1993.
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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.

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 Procedures for review by local advisory boards and the State Health Planning Board

(a) If at least 25 percent of the quorum of voting members at a meeting of a local advisory board votes affirmatively to approve a certificate of need application, regardless of whether the local advisory board's recommendation is to approve or deny the application, the application shall be forwarded to the State Health Planning Board for its review of the application. If the application does not receive the required minimum number of affirmative votes, the application shall not be submitted to the State Health Planning Board or the Commissioner for their reviews, respectively.

(b) If at least 25 percent of the quorum of voting members at a meeting of the State Health Planning Board votes affirmatively to approve a certificate of need application, regardless of whether the State Health Planning Board's recommendation is to approve or deny the application, the application shall be forwarded to the Commissioner for his or her review of the application. If the application does not receive the required minimum number of affirmative votes, the application shall not be submitted to the Commissioner of Health for his or her review.

(c) If an application which is consistent with the State Health Plan does not receive the required minimum number of affirmative votes by either a local advisory board or the State Health Planning Board, respectively, the applicant may request a fair hearing to permit the application to move to the next level for review. The request for a fair hearing shall be made to the Commissioner of Health within 30 days of the vote by the local advisory board or State Health Planning Board, as applicable. The fair hearing shall be held within 60 days of the request. If the Administrative Law Judge determines that the application should be reviewed by the next level for review, the applicant shall be so notified and the State Health Planning Board or the Commissioner, as applicable, shall review the application.

1. If a request for fair hearing is received within 30 days, it will be forwarded to the Office of Administrative Law where it will be processed expeditiously.

2. The Administrative Law Judge will review the reasonableness of the local advisory board's or State Health Planning Board's reasons for denial, as stated in its written decision, based on the documenting evidence that was presented to the LAB or SHPB. No other documentation may be introduced during the course of the hearing.

3. The decision of the Administrative Law Judge on whether the certificate of need application should proceed to the next step in the review process will be the final decision.

4. All certificate of need applications competing for the same service in the same area will be deferred by the Department until a final decision is rendered.

5. The process will be reactivated at the next appropriate step (to the State Health Planning Board or to the Commissioner) upon notice of the final decision of the Administrative Law Judge.

Case Notes

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 Delaware organ procurement agency's claim that State's decision to authorize sole statewide procurer was impermissible. Delaware Valley Transplant Program v. Coye, D.N.J.1989, 722 F.Supp. 1188.

Health Commissioner has obligation to provide fuller explanation for rejecting appraisals than mere statement that prioritization criteria outweigh recommendations. In re Certificate of Need Application of Arnold Walter Nursing Home, 277 N.J.Super. 472, 649 A.2d 1319 (A.D.1994).

There is right to "on the merits" assessment of competing proposals. In re Certificate of Need Application of Arnold Walter Nursing Home, 277 N.J.Super. 472, 649 A.2d 1319 (A.D.1994).

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).

Appeal from denial of certificate of need; in absence of any showing of fraud or bad faith on part of successful applicant for certificate of public need for cardiac surgical program, rejected applicants were limited in their challenge of Commissioner's decision. Application of Overlook Hospital, 215 N.J.Super. 401, 521 A.2d 1350 (App.Div.1987).

State Health Planning Board's denial of Certificate of need applications unlawful and unreasonable when Board fails to give written justification. Olsten Certified Health Care Corp. V. State Health Planning Board, 96 N.J.A.R.2d (HLT) 31.

Local advisory board not arbitrary or unreasonable in disapproving batch of applications for certificates of need by single vote. JFK Hartwyck at Oak Tree, Inc., v. Mid-State Health Advisory Corp., 96 N.J.A.R.2d (HLT) 18.

Hospital's certificate of need application not afforded fair and reasonable review. Bacharach Rehabilitation Hospital v. State Health Planning Board, 96 N.J.A.R.2d (HLT) 15.

State health board's denial of certificate of need application not reasonable when board fails to issue written decision. Wills/MMDC-Cape May County Court House Partnership v. State Health Planning Board, 96 N.J.A.R.2d (HLT) 8.

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.

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 was unreasonable without an accompanying written decision evaluating specific criteria. Tri-Med v. State Health Planning Board, 95 N.J.A.R.2d (HLT) 22.

Denial of medical center's application for certificate of need could not be reviewed for reasonableness in absence of a specific articulation in record of reasons for denial. In Re Hunterdon Application, 95 N.J.A.R.2d (HLT) 11.

Appeal from denial of certificate of need; reimbursement for construction costs which exceeded the approved project cost denied as untimely; denial of reimbursement for petitioner's interest amortization rate. Hillcrest Manor v. Dep't of Human Services, 9 N.J.A.R. 45 (1983).

8:33-4.15 Procedures for Commissioner of Health review

(a) The Commissioner may approve or deny an application for a certificate of need upon consideration of the State Health Plan and 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 will be sent to the applicant, to the appropriate local advisory board and to the State Health Planning Board, and shall be available to others upon request.