

(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 religious or ethical convictions may be considered to be public need.

(d) Certificate of need applications shall be reviewed for conformance with the rules in effect on the date the application is accepted for processing or deemed complete for processing, as applicable.

(e) Recommendations concerning certificates of need shall be governed and based upon the principles and considerations set forth in these rules, as well as applicable State laws and rules.

(f) Certificates of need shall be issued by the Commissioner based upon criteria and standards promulgated by the Commissioner and approved by the Health Care Administration Board. (See N.J.A.C. 8:33 and the applicable chapter for specific services.) If any application is denied, the applicant may request a hearing pursuant to the Administrative Procedure Act, P.L. 1968, c.410 (N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq.), and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 in accordance with N.J.S.A. 26:2H-9. Requests for a hearing shall be made to the Department within 30 days of receipt of notification of the Commissioner's action. The Department shall arrange for a hearing within 60 days of receipt of a request, and after such hearing the Commissioner or his or her designee shall furnish the applicant with the hearing examiner's written recommendations and reasons therefor. The Commissioner, within 30 days of receiving all appropriate hearing records, shall make his or her determination, which shall be a final agency decision.

(g) Projects involving building construction or renovations require submission of architectural plans to the Department of Community Affairs for approval prior to initiating building construction or renovations, in accordance with this chapter and the Department's licensing rules, regardless of whether the project requires a certificate of need or is exempt from the certificate of need requirement. At project completion, written notification and a copy of the certificate of occupancy shall be submitted to the Department of Community Affairs for final approval of the project.

(h) Written notification or application for a license, as applicable, shall be submitted to the Department's Certificate of Need and Acute Care Licensure Program or Long Term Care Licensing and Certification Program, as applicable, prior to the planned use of the beds, services or facility, in accordance with this chapter and the Department's licensing rules.

(i) Application for a license on forms prescribed by the Department shall be filed with the Certificate of Need and Acute Care Licensure Program or Long Term Care Licensing and Certification Program, as applicable, for approval prior to any transfer of ownership of beds, service or facility, in accordance with this chapter and the Department's licensing rules.

(j) No health care facility shall be operated unless it shall possess a valid license issued by the Department pursuant to N.J.S.A. 26:2H-1 et seq. The establishment of a new health care facility, the expansion of beds and services, and renovations or additions to health care facilities require approval from the Department's Certificate of Need and Acute Care Licensure Program or Long Term Care Licensing and Certification Program, as applicable, prior to operation/occupancy of the beds, services or areas.

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.

Case Notes

Regulations reflect concern over those aspects of health care that relate to patient access as well as personnel policies affecting patient care. *Desai v. St. Barnabas Medical Center*, 103 N.J. 79, 510 A2d 662 (1986).

Certificate of need requirements as valid exercise of police power. *Merry Heart Nursing and Convalescent Home, Inc. v. Dougherty*, 131 N.J.Super. 412, 330 A.2d 370 (App.Div.1974).

8:33-1.3 Definitions

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

"Accepted for processing" means an application, subject to N.J.A.C. 8:33-5, has been determined by the Department as eligible to be entered into the applicable review cycle.

"Adolescent acute psychiatric beds" means licensed psychiatric beds in a designated and separate unit of a licensed general, psychiatric or special hospital, established for the provision of intensive treatment to persons generally between the ages of 13 and 18 who are experiencing an acute episode of a primary psychiatric disorder and have been medically evaluated to require the services of a specifically designated unit.

"Adult acute psychiatric beds" means licensed psychiatric beds in a designated and separate unit of a general, psychiatric or special hospital, established for the provision of intensive evaluation, stabilization and treatment of persons 18 years of age and older who are experiencing an acute episode of a primary psychiatric disorder. Patients are admitted under voluntary status.

“Adult closed acute psychiatric beds” means licensed psychiatric beds in a designated and separate unit of a general, psychiatric, or special hospital for the provision of treatment services for persons experiencing an acute episode of a psychiatric disorder. All such persons are referred by a designated psychiatric screening center and may be admitted voluntarily or involuntarily if they are determined to be mentally ill and dangerous to self or others.

“Adult intermediate psychiatric beds” means licensed psychiatric beds in a separate and designated area in a general, psychiatric or special hospital for the provision of intensive psychiatric evaluation and treatment services as part of a comprehensive psychiatric and psychosocial rehabilitation program, and which are appropriate for individuals aged 18 and above who are experiencing an acute episode of a psychiatric disorder and who require a comprehensive and specialized treatment program that cannot be fully provided within a short-term acute psychiatric setting. Admissions to the intermediate psychiatric unit or facility have an average length of stay which is generally greater than the average length of stay for adult acute psychiatric units in New Jersey and less than 45 days.

“Advanced life support” (ALS) means an advanced level of prehospital, interhospital, and emergency service care which includes basic life support functions, cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive ventilation devices, trauma care, and other techniques and procedures authorized by the Commissioner, pursuant to N.J.S.A. 26:2K-7.

“Ambulance service” means the provision of emergency or non-emergency medical care and transportation by certified personnel in a vehicle, which is designed and equipped to provide medical care at the scene and while transporting sick and/or injured persons to or from a medical care facility or provider.

“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 or instrumentality (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 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 residence” means a facility that is licensed by the Department 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.

“Bed capacity” means the total number of beds, listed by health care service within the facility, which are recognized on the facility’s current license.

“Bloodless surgery” means the performance of surgery in a general hospital without the use of blood transfusion, including, but not limited to, adult cardiac surgery and exclusive of pediatric cardiac surgery, solid organ transplantation, high risk perinatal, and trauma surgery.

“Burn center” means a general hospital that provides the same comprehensive burn care services as required of a burn unit. In addition, a burn center provides intensive and comprehensive in-service training and education for all burn care personnel and includes a research component.

“Burn program” means a general hospital that provides therapy to burn patients, which includes fluid resuscitation and electrolyte balance, hydrotherapy, debridement, escharotomy, and shock prevention.

“Burn unit” means a general hospital that has beds committed solely to burn care, a large and diversified physician staff and nursing staff that rotate solely in this service. A burn unit shall provide electrocardiograph-oscilloscope defibrillation, cardiac output monitoring, physical therapy-hydrotherapy and occupational therapy.

“Central service facility” means a health care facility, regulated by the Department, providing essential administrative and clerical support service to two or more direct providers of health care services in a region and which may also include some direct provision of health care services.

“Change in cost” means any cost in excess of the total approved cost in the most recent certificate of need approval for the project.

“Change in project scope” is defined as a deviation from the approved certificate of need, which results in a change in any one of, but not limited to, the following:

1. Number of beds by service;
2. Change in complement of major movable equipment, that is, cardiac catheterization;
3. Array of services;
4. Service area;
5. Access or availability to the approved project;
6. Population served including the percentage of Medicaid and medically indigent required to be served as a condition of certificate of need approval; or
7. Square footage.

“Children’s acute psychiatric beds” means licensed psychiatric beds in a designated unit of a licensed general, psychiatric or special hospital, for the provision of intensive treatment of persons generally under the age of 13 who are experiencing an acute episode of a psychiatric disorder and have been medically evaluated to require acute psychiatric inpatient services.

“Commissioner” means the State Commissioner of Health and Senior Services.

“Community perinatal center” means a licensed hospital designated within a Maternal and Child Health Service Region as one of the following:

1. “Community perinatal center—basic” means a licensed general hospital that provides services to uncomplicated maternity and normal newborn patients in accordance with the scope of functions delineated in its formal letter of agreement with the regional perinatal center. This hospital is characterized by physically separated facilities for labor, delivery, and newborn care, with cesarean section capability within the perinatal suite. The hospital must also provide supportive care for infants returned from regional or community perinatal center—intensive care facilities. Such a facility shall provide care to patients expected to deliver neonates greater than 2,499 grams and at least 36 weeks gestational age.

2. “Community perinatal center—intermediate” means a licensed general hospital which provides care to a minimum of 800 complicated maternity patients and neonates in accordance with the scope of functions delineated in its formal letter of agreement with the regional perinatal center. Such a facility shall provide care to patients expected to deliver neonates greater than 1,499 grams and at least 32 weeks gestational age.

3. “Community perinatal center—intensive” means a licensed general hospital which provides care to complicated maternity patients and neonates in accordance with the scope of functions delineated in its letter of agreement with the hospital and the Regional Perinatal Center. Such a facility shall provide care to patients expected to deliver neonates greater than 999 grams and at least 28 weeks gestational age.

“Comprehensive personal care home” means a facility that is licensed by the Department to provide room and board and to assure that assisted living services are available when needed, to four or more adults unrelated to the proprietor. Residential units in comprehensive personal care homes house no more than two residents and have a lockable door on the unit entrance.

“Comprehensive rehabilitation” means services offered by a licensed rehabilitation hospital and characterized by the coordinated delivery of multidisciplinary care intended to achieve the goal of maximizing the self-sufficiency of the patient.

“Construction” means the erection, building, alteration, reconstruction, improvement, renovation, extension or modi-

fication of a health care facility, including fixed equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

“Deemed complete for processing” means an application, subject to N.J.A.C. 8:33-4, that, determined to be complete by the Department, has been entered into the applicable review cycle.

“Deferral” means a suspension of the review of a submitted application for a limited period of time.

“Demonstration project” generally refers to a health care service, technology, equipment or modality not currently available in the State or which targets unique institutional circumstances or the needs of underserved populations. A demonstration project requires a certificate of need as specified at N.J.A.C. 8:33-3.11.

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

“Discontinuance” means any health care facility which has closed or substantially ceased operation of any of its beds, facilities, services, or equipment for a period of two succeeding years.

“Emergency medical service helicopter” means a service which provides aeromedical emergency care and transportation by rotating aircraft and is licensed in accordance with N.J.A.C. 8:41.

“Expedited review cycle” means the period of time from the date the application is submitted to the expedited review process through the date a decision is rendered by the Commissioner.

“Expedited review process” means the review by the Department of a certificate of need application meeting certain specified criteria. Such a review process does not include a review by the State Health Planning Board.

“Fixed equipment” means equipment which is attached to the physical plant of a facility.

“Full review cycle” means the period of time from the date the application is submitted to the full review process through the date a decision is rendered by the Commissioner.

“Full review process” means the review of an application by the State Health Planning Board, as well as the Department.

“General hospital” means a hospital which maintains and operates organized facilities and services as approved by the Department for the diagnosis, treatment or care of persons suffering from acute illness, injury or deformity and in which all diagnosis, treatment and care are administered by or performed under the direction of persons licensed to practice medicine or osteopathy in the State of New Jersey.

“General long-term care” means a long-term care bed for which there is no restriction imposed by statute (for example, subacute long-term care), certificate of need approval requirements (for example, pediatric long-term care, specialized long-term ventilator care, specialized long-term care of patients with severe behavior management problems) or stipulations and/or licensure standards that would limit the type of nursing home patient who may occupy the bed or the type or length of nursing home care which may be provided to the occupant of the bed.

“Health care facility” means the facility or institution, whether public or private, engaged principally in providing services for health maintenance organizations, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, special hospital, mental hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, intermediate care facility, assisted living residence, comprehensive personal care facility, tuberculosis hospital, chronic disease hospital, maternity hospital, outpatient clinic, dispensary, home health care agency, residential health care facility and bioanalytical laboratories (except as specifically excluded hereunder) or central services facility serving one or more such institutions but excluding institutions that provide healing solely by prayer and excluding such bioanalytical laboratories as are independently owned and operated, and are not owned, operated, managed or controlled in whole or in part, directly or indirectly by any one or more health care facilities and the predominant source of business of which is not by contract with health care facilities within the State of New Jersey and which solicit or accept specimens and operate predominantly in interstate commerce.

“Health care service” means the preadmission, outpatient, inpatient, and postdischarge care provided in or by a health care facility, and such other items or service as are necessary for such care, which are provided by or under the supervision of a physician for the purpose of health maintenance or diagnosis or treatment of human disease, pain, injury, disability, deformity, or physical condition, including, but not limited to, nursing service, home care nursing and other paramedical service, ambulance service, service provided by an intern, resident in training or physician whose compensation is provided through agreement with a health care facility, laboratory service, medical social service, drugs, biologicals, supplies, appliances, equipment, bed and board, but excluding services provided by a physician, nurse practitioner, clinical nurse specialist, certified nurse midwife or physician assistant, in his or her private practice, unless the service is the subject of a health planning regulation as defined in this section, adopted by the Department of Health or involves the acquisition of major moveable equipment as specified herein, and services provided by volunteer first aid, rescue and ambulance squads as defined in the New Jersey Highway Safety Act of 1971, P.L. 1971, c.351.

“Home health agency” means a facility that is licensed by the Department to provide preventive, rehabilitative, and therapeutic services to patients in the patient’s home or place of residence. All home health agencies shall provide nursing, homemaker-home health aide, and physical therapy services.

“Hospital system” means a group of licensed general hospital facilities owned or controlled by the same legal entity.

“Inner city cardiac satellite demonstration project” means a cooperative expansion of invasive therapeutic cardiac services within a hospital system, whereby a satellite hospital within the system is permitted to provide invasive therapeutic cardiac services already provided by an inner city hospital within the same hospital system and which meets all of the criteria set forth in this chapter and N.J.A.C. 8:33E.

“Inner city hospital” means a general hospital which is located in a city with a population which is greater than 50,000 (or in a city with population greater than 10,000 located in a county with population density greater than 2,500 persons per square mile) and in which more than 10 percent of families in the city have income levels which are below the Federal poverty line, as determined in accordance with 42 U.S.C. § 9902(2).

“Invasive cardiac services” means cardiac catheterization which is the insertion of a thin, flexible tube (catheter) into a vein or artery and guiding it into the heart for purposes of determining cardiac anatomy and function.

“Invasive therapeutic cardiac services” means the full array of therapeutic cardiac interventional procedures that includes, but is not limited to, coronary artery bypass graft (CABG), percutaneous transluminal coronary angioplasty (PTCA), and complex electrophysiology studies (EPS).

“Long term acute care hospital-within-a-hospital” means a hospital established in accordance with the standards imposed by the United States Department of Health and Human Services at 42 C.F.R. Part 412 et al. that occupies space in a building also used by another hospital and is licensed as a special hospital in accordance with N.J.A.C. 8:43G-38.

“Long term acute care hospital-freestanding” means a hospital established in accordance with the standards imposed by the United States Department of Health and Human Services at 42 C.F.R. Part 412 et al. that is a physically separate self-contained facility and is licensed as a special hospital in accordance with N.J.A.C. 8:43G-38.

“Major moveable equipment” means cardiac catheterization equipment.

“Maternal and child health consortium” means a nonprofit organization that is licensed as a central service facility by the Department as specified in N.J.A.C. 8:33C, and incorporated under Section 501(c)(3) of the United States Internal Revenue Code.

“Medically underserved” means segments of the population whose utilization of health care services is disproportionately low 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).

“Minor moveable equipment” means equipment which does not fall within the definition of major moveable equipment stated herein.

“Mobile intensive care unit” (MICU) means a specialized emergency medical service vehicle staffed by mobile intensive care paramedics or mobile intensive care nurses trained in advanced life support nursing and operated for the provision of advanced life support services under the direction of an authorized hospital.

“Modernization/renovation” means the alteration, expansion, major repair, remodeling, replacement, and renovation of existing buildings, and the replacement of obsolete equipment of existing buildings.

“Null and void,” “nullification,” and “nullify” means the revocation of a certificate of need by the Commissioner prior to the expiration of the certificate.

“Operator” of a health care facility means the person or entity which is the holder of the facility license and which has the ultimate responsibility for the provision of health care services in the facility in accordance with applicable legal and professional standards.

“Pediatric intensive or critical care” means a general hospital unit in which special equipment and skilled personnel are concentrated to provide immediate and continuous attention to pediatric patients who, because of surgery, shock, trauma, serious injury or life threatening conditions, require intensified comprehensive observation, and care.

“Pediatric long-term care” means a facility, distinct nursing unit, or program which is dedicated for occupancy by patients under age 20 who require long-term care services.

“Pediatric service” means provision of services by a general hospital to pediatric patients.

“Perinatal” means the period from the 20th week of gestation through the neonatal period.

“Person” shall include a corporation, limited liability corporation, company, association, society, firm, partnership,

limited liability partnership, and joint stock company, as well as an individual.

“Planning region” means the county(ies) where (a) facility(ies), service(s), or bed(s) subject to CN is located and/or proposed to be located, in accordance with the approved CN, and contiguous counties.

“Principal” means any individual, partnership, or corporation with an ownership interest in the operating entity of a health care facility or service, or a general or managing partner in a limited partnership.

“Project cost” means costs submitted in those dollars which would be needed to complete the project over the anticipated period of construction, if construction were to begin at the time of certificate of need submission.

“Provider of health care” means an individual:

1. Who is a direct provider of health care service in that the individual’s primary activity is the provision of health care services to individuals or the administration of health care facilities in which such care is provided and, when required by State law, the individual has received professional training in the provision of such services or in such administration; or

2. Who is an indirect provider of health care in that the individual:

i. Holds a fiduciary position with, or has a fiduciary interest in, any entity described in subparagraph 2ii(2) or subparagraph 2ii(4) below; provided, however, that a member of the governing body of a county or any elected official shall not be deemed to be a provider of health care unless he is a member of the board of trustees of a health care facility or a member of a board, committee or body with authority similar to that of a board of trustees, or unless he participates in the direct administration of a health care facility; or

ii. Received, either directly or through his or her spouse, more than one-tenth of his or her gross annual income for any one or more of the following:

(1) Fees or other compensation for research into or instruction in the provision of health care services;

(2) Entities engaged in the provision of health care services or in research or instruction in the provision of health care services;

(3) Producing or supplying drugs or other articles for individuals or entities for use in the provision of or in research into or instruction in the provision of health care services; or

(4) Entities engaged in producing drugs or such other articles.

“Psychiatric hospital” means a hospital licensed by the Department which assures the provision of comprehensive specialized diagnosis, care, treatment and rehabilitation where applicable on an inpatient basis for patients with primary psychiatric diagnoses.

“Regional perinatal center” means a licensed general acute care hospital designated within a Maternal and Child Health Service Region which is required to provide care to high risk mothers and neonates. Such a facility shall provide consultation, referral, transport and consultation to its regional affiliates.

“Rehabilitation hospital” means a hospital licensed by the Department to provide comprehensive rehabilitation services to patients for the alleviation or amelioration of the disabling effects of illness. Comprehensive rehabilitation services are characterized by the coordinated delivery of multidisciplinary care intended to achieve the goal of maximizing the self-sufficiency of the patient. A rehabilitation hospital is a facility licensed to provide only comprehensive rehabilitation services or is a distinct unit providing only comprehensive rehabilitation services located within a licensed health care facility.

“Research projects” are projects whose scope of inquiry and activity are exclusively limited to the execution of a research protocol which when it involves human subjects must be approved by an Institutional Review Board; whose services and interventions are provided to approved study subjects alone; who do not bill for or receive reimbursement for the services, equipment, or interventions provided through the research; and whose services, equipment, or interventions are not competing with and do not negatively impact upon licensed providers of health care services in the State, as determined by the Commissioner.

“Satellite hospital” means, for purposes of N.J.A.C. 8:33E-3.11, a general hospital that is not the inner city hospital which is the subject of an inner city cardiac demonstration project, but which shall be a general hospital within the same hospital system as the inner city hospital at issue.

“Service area” means a geographic area, generally a county within which the facility or service is located. However, definitions of service areas specified in approved planning rules shall take precedence over this general definition.

“Special hospital” means a hospital which maintains and operates organized facilities and services as approved by the Department for the diagnosis, treatment or care of persons suffering from acute illness, injury or deformity in which comprehensive specialized diagnosis, care, treatment and rehabilitation are administered by or performed under the direction of persons licensed to practice medicine or osteopathy in the State of New Jersey, where applicable, on an inpatient basis for one or more specific categories of patients as approved by the Department.

“Special psychiatric beds” means licensed psychiatric beds within any separate unit or section of a licensed general, psychiatric or special hospital which are utilized for the treatment of an identified target population of any age demonstrated to require a specialized program of treatment for acute psychiatric disorders. Examples include units designated to provide services to persons with eating disorders,

geriatric services and with dual psychiatric/substance abuse diagnoses. Admissions to the unit or facility should have an average length of stay that reflects the level of active medical care for each category of special psychiatric beds and, as a guideline, does not exceed 60 days.

“Specialized long-term care” means a program of care provided in licensed long-term care beds for patients who require technically complex treatment with life supporting equipment or who have serious problems accessing appropriate nursing home care due to the specialized treatment required by their medical diagnoses and level of functional limitation.

“Specialty acute care children’s hospital” means a general hospital, designated by the Commissioner pursuant to a statutory mandate, that provides diagnostic and specialty treatment services for children and is licensed in accordance with N.J.A.C. 8:43G-22.

“State” means the State of New Jersey.

“State Health Planning Board” means the board established pursuant to N.J.S.A. 26:2H-5.7, to conduct certificate of need review activities.

“Statewide restricted admissions facility” means a non-profit nursing home owned and operated by a religious or fraternal organization that serves only members of that organization and their immediate families and meets the specific requirements set forth in N.J.A.C. 8:33H.

“Subject of a health planning regulation” means any health care service identified in the Appendix, Exhibit 1.

“Teaching hospital” means, for purposes of N.J.A.C. 8:33-3.11(c), a general hospital engaged in a graduate medical education residency program in cardiology approved by a nationally recognized credentialing organization.

“Termination” means a certificate of need is not extended by the Commissioner beyond its expiration date.

“Total capital cost” means all costs associated with the proposed project including studies and/or surveys; architect, engineer, legal fees; plans and specifications; supervision and inspection of site and buildings; demolition, renovation, construction; fixed and major moveable equipment, purchase of land and buildings; lease and/or rentals; developmental and/or start up costs, but excluding carrying and financing cost and/or fees, interest and debt service reserve fund. Total capital cost excludes any contingency amounts.

“Trauma services” means the treatment of wounds or injuries of sufficient severity to require treatment at a Level I or Level II trauma center, as measured by the immediate threat of death imposed by the injury, the presence of injuries to multiple systems, Injury Severity Score or other trauma scoring systems, and/or the application of appropriate trauma triage decision criteria.

“Total project cost” means all costs associated with the proposed project, including all capital costs, carrying and financing costs, net interest on borrowings during construction, debt service reserve fund. Total project cost excludes any contingency amounts.

“Withdrawal” means a voluntary written request by a certificate of need applicant to the Department to cease any further review of a submitted application submitted before the Commissioner acts on the application. Such a request shall be considered final by the Department and no further consideration or review shall be given to the “withdrawn” application.

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).
Amended by R.1999 d.272, effective August 16, 1999.
See: 31 N.J.R. 950(a), 31 N.J.R. 2375(a).
Inserted “Bloodless surgery”.
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.

Case Notes

Certificate of need required when private physician initiated health care service. *Associates In Radiation Oncology, P.A. v. Siegel*, 272 N.J.Super. 208, 639 A.2d 729 (A.D.1994).

Determination that certificate of need was not required, remand required for specific findings of fact. *Associates In Radiation Oncology, P.A. v. Siegel*, 272 N.J.Super. 208, 639 A.2d 729 (A.D.1994).

Standing to appeal determination on application for certificate of need. *Associates In Radiation Oncology, P.A. v. Siegel*, 272 N.J.Super. 208, 639 A.2d 729 (A.D.1994).

Commissioner did not have discretion to remove condition in certificate of need for linear accelerator. In re Certificate of Need Application of *Chilton Memorial Hosp.*, 269 N.J.Super. 426, 635 A.2d 986 (A.D.1993).

Policy statement illustrates pervasiveness of State’s regulatory concern. *Desai v. St. Barnabas Medical Center*, 103 N.J. 79, 510 A.2d 662 (1986).

SUBCHAPTER 2. APPLICABILITY OF CERTIFICATE OF NEED REQUIREMENTS

8:33-2.1 Types of review

There will be two types of review of certificate of need applications: full review, as described in N.J.A.C. 8:33-4.1(a), and expedited review, as described in N.J.A.C. 8:33-4.1(b). The full review process shall apply to all certificate of need applications not specifically identified herein as meeting the criteria for expedited review. The review process shall apply as specified in Exhibit 3 of the Appendix, incorporated herein by reference.

Amended by R.1996 d.101, effective February 20, 1996.
See: 27 N.J.R. 4179(a), 28 N.J.R. 1228(a).
Amended by R.2002 d.243, effective August 5, 2002.

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

Substituted “two” for “three” preceding “types of review”, deleted “direct review, described in N.J.A.C. 8:33-4.1(b)”, substituted “8:33-4.1(b)” for “8:33-4.1(c)” in the first sentence, deleted “direct review or” preceding “expedited review” in the second sentence and substituted “3” for “4” following “Exhibit” in the third sentence.

Case Notes

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).

Regulations reflect concern over those aspects of health care that relate to patient access as well as personnel policies affecting patient care. *Desai v. St. Barnabas Medical Center*, 103 N.J. 79, 510 A.2d 662 (1986).

8:33-2.2 Determination of a health care facility or service

(a) It is incumbent upon all health care facilities and services to comply with the certificate of need requirements set forth in statute and rules promulgated pursuant thereto. If such automatic compliance is not forthcoming, the Commissioner, consistent with the “public policy of the State that access to health care services of the highest quality are of vital concern to the public health” (N.J.S.A. 26:2H-1) and in accordance with the definitions of a health care facility and a health care service, as specified in N.J.S.A. 26:2H-2 and 26:2H-7, shall determine whether a proposed or existing system or modality of health care delivery constitutes a health care service or health care facility subject to certificate of need requirements. If so designated, such facility shall be subject to all of the provisions of the Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq.) and rules promulgated pursuant thereto.

(b) Those factors which shall be considered relevant as to whether a facility meets the definition of a health care facility or service shall include:

1. The types of health care service and facilities, and changes thereto, which are required to obtain certificate of need approval by the provisions of this subchapter;
2. The type of health care service delivered or to be delivered, its impact on existing health care facilities and providers and its potential effect on the health care delivery system;
3. The degree of complexity in terms of medical technology, equipment, and the medical, paramedical and administrative staffing required to provide the health care service; and
4. Any other factors specific to the unique circumstances of an individual applicant.

(c) When a determination is made that a health care service/health care facility is deemed to require certificate of need review, the person(s) involved shall be so notified by the Commissioner. The Commissioner’s decision shall be a final agency decision.

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), rewrote the second sentence; deleted (b) and recodified former (c) as (b), substituted "as to whether a facility meets the definition" for "to the determination" following "relevant", deleted former (c)3 and recodified former 4 as 3, deleted former 5 through 6 and recodified former 7 as 4; recodified former (d) as (c).

Law Review and Journal Commentaries

Health Law—Hospitals. Steven P. Bann, 136 N.J.L.J. No. 5, 66 (1994).

Case Notes

Commissioner could not have discretion to remove condition in certificate of need for linear accelerator. In re Certificate of Need Application of Chilton Memorial Hosp., 269 N.J.Super. 426, 635 A.2d 986 (A.D.1993).

Women's medical centers held by Commissioner to be health care facilities; Appellate Division held that regulations cannot apply to private office on basis of internal business management. Women's Medical Center at Howell v. Finley, 7 N.J.A.R. 262 (1982), reversed 192 N.J.Super. 44, 469 A.2d 65, certification denied 96 N.J. 279, 475 A.2d 578. (App.Div.1983).

Outpatient drug rehabilitation clinic required to obtain certificate of need; zoning ordinance liberally construed to permit clinic operation. L & L Clinics, Inc. v. Irvington, 189 N.J.Super. 332, 460 A.2d 152 (App.Div.1983), certification denied 94 N.J. 540, 468 A.2d 191 (1983).

Statutory amendment exempting certain non-profit corporations from certificate of need requirements constitutional; amendment not prohibited special legislation. Paul Kimball Hospital v. Brick Twp. Hospital, 86 N.J. 429, 432 A.2d 36 (1981).

Mobile multiphasic health testing service is a health care facility subject to certificate of need requirements. Medcor, Inc. v. Finley, 179 N.J.Super. 142, 430 A.2d 964 (App.Div.1981).

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.

Improper transfer of nursing care facilities; period from dates on which facilities entered into agreements until applications for Certificate of Need filed constituted periods of violations; penalties assessed. In Matter of Oakridge Manor Nursing Home. 93 N.J.A.R.2d (HLT) 1.

Denial of Certificate of Need for proposed hyperbaric chamber facility; reasonable. New Jersey Chamber Facility, Inc. v. Department of Health. 92 N.J.A.R.2d (HLT) 5.

Failure to secure legal representation to appeal decision approving application for certificate of need for development of a Hyperbaric Oxygen Therapy Program warranted dismissal of appeal. N.J.S.A. 26:2H-6. In Matter of the Medical Center of Ocean County, 91 N.J.A.R.2d 1 (HLT).

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).

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.

8:33-2.3 (Reserved)

Repealed by R.2002 d.243, effective August 5, 2002.
See: 34 N.J.R. 458(a), 34 N.J.R. 2814(a).

Section was "Waiver to certificate of need requirements for physicians".

8:33-2.4 (Reserved)

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

See: 34 N.J.R. 345(a), 34 N.J.R. 2814(a)

Section was "Waivers to certificate of need requirements for health maintenance organizations".

SUBCHAPTER 3. TYPES OF CERTIFICATE OF NEED APPLICATIONS

8:33-3.1 Initiation of health care service

Establishment of any of the specified standard categories of health care services as referenced in N.J.S.A. 26:2H-1 et seq., as amended and/or as identified in the chapter Appendix, Exhibit 1, incorporated herein by reference, or the modification, replacement or expansion of any health care service or facility, regardless of the amount of capital or operating expenditures requires a certificate of need except as exempted by P.L. 1992, c.160, as amended by P.L. 1998, c.43 or otherwise exempted pursuant to this chapter. The certificate of need application shall be subject to the full review or direct review process, except as provided for at N.J.A.C. 8:33-5.1(a).

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

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

Substituted "Exhibit 1" for "Exhibit 2" and "as amended by P.L. 1998, c.43 or otherwise exempted pursuant to" for "as stated in" following "P.L. 1992, c.160".

8:33-3.2 Termination/discontinuance of service or facility and/or reduction of licensed bed capacity

(a) Any health care facility which has closed or substantially ceased operation of any of its beds, facilities or services which require a certificate of need to be initiated, for any consecutive two-year period, shall be required to obtain a certificate of need before reopening such beds, facilities or services.

(b) Voluntary closure of a facility or discontinuance of all of its services does not require a certificate of need, except that the closure of a general hospital requires a certificate of need and shall follow the full review process. Applications for the closure of a general hospital shall be accepted on the first business day of any month. Where a certificate of need is not required pursuant to this section, written notification shall be filed with the Department's Certificate of Need and Acute Care Licensure Program, 30 days prior to the proposed closure of a facility or discontinuance of all of its services. Full compliance with all applicable Department requirements contained in this chapter and in service-specific chapters for closure/discontinuance shall be required.