

(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 A.2d 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 modification 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 rotowing 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.

"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.

i. In order to maintain approval of a bloodless surgical demonstration project, each general hospital with a bloodless surgical demonstration project shall submit documentation no later than 180 days following the effective date of such rules demonstrating that its bloodless surgical demonstration project is in compliance with the new or additional standards set forth by the Department.

ii. A hospital that fails to submit documentation of its compliance with the new standards, or that otherwise fails to comply with the new or additional standards shall cease its bloodless surgical demonstration project within 30 days following the date of written notice from the Commissioner of the general hospital's failure to comply, except with respect to follow-up care and discharge planning for current patients participating in the bloodless surgical demonstration projects, and shall provide all necessary assistance to physicians and their patients in locating another hospital with an approved bloodless surgical program.

(e) The Commissioner may issue a call for demonstrations, not specifically identified in this section.

1. Such call will be activated upon public notice by the Commissioner inviting certificate of need applications for the specific service and published in the New Jersey Register no less than 45 days prior to the date the application is required to be filed.

2. Unless otherwise specified in these and other applicable rules, each demonstration application shall include the following:

i. Documentation of exactly what is proposed to be demonstrated;

ii. Patient care policies used as part of the demonstration, including criteria for inclusion/exclusion in the demonstration;

iii. Proposed staff and staff qualifications for the demonstration;

iv. Written documentation that otherwise eligible patients will be accepted into the demonstration regardless of ability to pay;

v. Documentation of what data will be collected to evaluate the demonstration project; and

vi. Written assurances that all data collected to evaluate the demonstration project shall be reported to the Department in accordance with requirements specified by the Department.

3. In the case of a demonstration that involves the addition of new beds or services otherwise subject to certificate of need, the applications shall be subject to review by the State Health Planning Board.

4. All demonstrations shall be approved for a period not to exceed two years unless otherwise specified in the call notice.

5. Approved demonstrations shall receive licensure approval from the Department to operate the service for the time period specified in the call notice plus the evaluation period specified by the Department in its approval letter, provided all applicable licensure standards are met.

i. All applicants for demonstrations shall be notified in writing by the Department as to whether they shall be permitted continued operation of the service that is the subject of the demonstration within 60 days of the expiration date of the demonstration license;

ii. Where the Department denies continuance of the demonstration project past the originally approved deadline, as set forth in (e)4 above, the demonstration project shall cease operating not later than 30 days after receipt of the written denial notice by the Department. Operators of denied demonstration projects shall have the right to appeal the Department's denial. A Notice of Appeal shall be sent to the Department within 30 days of receipt of the Department's denial notice. The appeal process shall comply with the requirements set forth in the Administrative Procedure Act, 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.

6. All applicants, through a resolution of its Board of Directors, shall acknowledge and accept the standards and criteria set forth for the demonstration as conditions of approval and agree to be bound thereto.

Amended by R.1998 d.303, effective June 15, 1998.  
See: 30 N.J.R. 303(a), 30 N.J.R. 2270(b).

Inserted (a) and (b).

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

Added (d).

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).

#### 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 notice(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).

#### 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).

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) 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).

**8:33-4.3 Submission of applications**

(a) Thirty-five copies of the application shall be submitted to:

Certificate of Need and Acute Care Licensure Program  
 New Jersey State Department of Health and Senior Services  
 PO Box 360, Room 403  
 John Fitch Plaza  
 Trenton, New Jersey 08625-0360  
 (609)292-6552, or 292-7228

(b) Below is the schedule of fees, based on total project costs, required when submitting any application for a certificate of need for the expedited, direct, or full review process. Fees shall be paid in full at the time applications are filed. Failure to pay the appropriate application filing fee in full shall cause the application not to be accepted for processing. Certified checks, cashiers' checks or money orders must be made payable to Treasurer, State of New Jersey. No cash or personal checks will be accepted. The certificate of need application fee shall be non-returnable, except that, if an application is submitted in the incorrect batch, is unresponsive to the notice issued by the Commissioner or inappropriately requests expedited review, it may be declared not acceptable for processing by the Department, in which case the filing fee will be returned.

1. Establishment of a facility or service; Change in the capacity of an existing facility or service; Acquisition of major moveable equipment:

<u>Total Project Cost (TPC)</u>	<u>Fee Required</u>
\$1,000,000 or less	\$5,000
Greater than \$1,000,000	\$5,000 + 0.15% of TPC
2. Change in scope:	\$5,000
3. Change in cost for \$1,000,000 or more	0.15% of additional project cost over \$1,000,000
4. Extension of time	\$5,000
5. Transfer of ownership	\$5,000

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).  
 Rewrote the section.

**8:33-4.4 Certificate of need filing requirements**

(a) An applicant shall document in the application that he or she owns the site where the facility, service, or equipment will be located, or has an ownership or lease option for such site, which option is valid at least through the certificate of need processing period. A duly executed copy of the deed, option or lease agreement for the site shall be submitted with the certificate of need application and include identification

of site, terms of agreement, date of execution and signature of all parties to the transaction. If the site is optioned or leased by the applicant, a copy of the deed held by the current owner shall be required at the time of filing.

(b) One hundred percent of the operation of the proposed facility, service or equipment shall be accounted for in the certificate of need application. Each and every principal involved in the proposal shall be identified by name, home address and percentage of interest, except that, if the operation is a publicly held corporation, each and every principal who has a 10 percent or greater interest in the corporation shall be identified by name, home address and percentage of interest. Where a listed principal has an operating interest in another health care facility, in this or any other state, identification of the principal(s), the health care facilities in which they have an operating interest, and the nature and amount of each interest shall be specified.

(c) If the applicant is a registered corporation, the name and address of the registered agent shall be identified in the application.

(d) The operator of the proposed facility, service, or equipment shall file and sign the application. In the case of transfer of ownership the proposed owner/operator is considered to be the applicant. However, both the current owner/operator and proposed owner/operator shall file and sign the application.

(e) If the applicant does not comply with all of the provisions in (a) through (d) above, the Department shall determine the application to be not acceptable for processing.

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.

**8:33-4.5 Review for completeness**

(a) Only complete applications shall be processed. The Department alone shall make the determination of the completeness status of applications. The Department shall make a decision on the completeness status of an application after the applicant has been given the opportunity to supplement the application within a specified timeframe in response to specific questions by the Department. The Department shall then make a decision on the completeness of the application. The Department shall notify the applicant of its determination. Upon issuing a determination that an application is complete, copies thereof shall be referred by the Department to the State Health Planning Board for review. If an application has been determined to be incomplete, the Department shall notify the applicant in writing citing the specific deficiencies in the application. The filing fee shall not be returned. The applicant may file a new application in the next appropriate cycle with the appropriate information.

(b) An application which is unresponsive to the notice issued by the Commissioner, or inappropriately requests

expedited review may be declared not acceptable for processing by the Department, based on the standards contained in the chapter and the applicable service-specific chapter. The Department shall notify the applicant of this decision and the filing fee shall be returned.

(c) Once an application has been submitted to the Department, no subsequent submission of information shall be accepted, unless specifically requested in writing by the Department. Questions from the State Health Planning Board shall be transmitted by the Department to the applicant. Responses to all questions shall be forwarded to the Department for dissemination to the State Health Planning Board.

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: 38 N.J.R. 1474(b).

#### Case Notes

Denial of application for certificate of need to operate medical center hospice was not unreasonable when based on lack of area need. Matter of Community Medical Center/HHP, 95 N.J.A.R.2d (HLT) 27.

#### 8:33-4.6 Modification of applications

(a) Under no circumstances shall an application be modified or altered to change the number or category of inpatient beds, proposed services, equipment subject to a planning regulation, proposed operator, or change in site after the application submission deadline date. An applicant desiring to make such a modification or alteration shall be required to withdraw the application from the current cycle and submit a new application for the next cycle.

(b) Modifications not specified in (a) above, such as changes in square footage and change in cost, shall be permitted if such changes are in response to completeness questions from the Department and made prior to submission of the application to the review process.

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 "proposed operator," following "planning regulation,".

#### 8:33-4.7 Deferral of applications

(a) An applicant may request in writing a deferral for up to a total of six months for an individual application that is not competitive or comparatively reviewed. If the applicant fails to notify the Department in writing to reactivate the application within this time frame, a new application shall be required. An applicant may not defer an application submitted in a competitive or comparatively reviewed batch. If the applicant does not wish to proceed in the review process, the application shall be withdrawn.

(b) The State Health Planning Board or the Department may defer an individual certificate of need application where

the application is not competitive or comparatively reviewed with other applications. Where projects are competitive or comparatively reviewed, the State Health Planning Board or the Department may defer the entire batch or only those projects which are competitive or comparatively reviewed. The basis for any deferral shall be specified in writing to the applicant. The period of deferral of an individual certificate of need application, all projects in a batch which are competitive or comparatively reviewed, or an entire batch of certificate of need applications may not exceed six months.

(c) An applicant may revise the deferred project costs to account for inflation and may be requested by the Department to submit additional updated information prior to reactivation of the application.

1. Reactivated applications with no changes or with only a change in cost may continue in the review process from the point of deferral.

2. Reactivated applications with any change in project scope shall be treated as a new application and shall follow the review process beginning with submission of the application to the Department, except that if the application is modified in a non-substantive way, that is, if the modification were proposed separately, it would either not require certificate of need review or would require only an expedited review, the application may continue from the point of deferral.

(d) The Department shall not accept any requests for a deferral from the applicant once the State Health Planning Board has made its recommendation.

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.

#### 8:33-4.8 Withdrawal of applications

An applicant may submit a written request for withdrawal of its application prior to final action by the Commissioner. The certificate of need filing fee shall not be returned in the event of a withdrawn application. Once an action has been taken by the Commissioner, the application shall not be withdrawn.

#### 8:33-4.9 General criteria for review

(a) No certificate 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 to be served, can be financially accomplished and licensed in accordance with applicable licensure regulations, will not have an adverse impact on access to health care services in the region or Statewide, and shall contribute to the orderly development of adequate and effective health care services. In making such determinations there shall be taken into consideration:

11. No certificate of need application will be approved for any applicant with existing non-waiverable violations of licensure standards at the time of filing, or before final disposition of the application or for an applicant with a history of noncompliance with licensing, statutory or regulatory standards which, as determined by the Department, threaten the life, safety or quality of care of patients. An exception shall be made in the case of applications submitted for the purpose of correcting recognized major licensure deficiencies. An exception to this provision may also be granted for applications submitted for the closure of a general hospital.

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.2002 d.243, effective August 5, 2002.

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

Rewrote the section.

Petition for Rulemaking.

See: 34 N.J.R. 3652(b), 34 N.J.R. 4475(b).

Petition for Rulemaking.

See: 35 N.J.R. 2751(c), 5621(b).

Petition for Rulemaking.

See: 36 N.J.R. 223(b).

#### Case Notes

Lack of sufficient record precludes finding certificate of need application's disapproval reasonable. *Rolling Hills of Hunterdon Care Center, Inc. v. State Health Planning Center*, 97 N.J.A.R.2d (HLT) 3.

Denial of hospital's application to provide home health agency services was unreasonable when alleged shortcomings were also present in other approved applications. *Burdette Tomlin v. State Health Planning Board*, 95 N.J.A.R.2d (HLT) 13.

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.

#### 8:33-4.11 (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 "Notification of review cycles".

#### 8:33-4.12 (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 "Functions of local advisory boards".

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

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

(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.

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.2002 d.243, effective August 5, 2002.

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

In (a), inserted "subject to full review" following "certificates of need".

#### 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.

Either transcript or minutes of state health board's meeting could serve as required "written decision" regarding recommendations on certificate of need (CON) applications, so long as document in question contained particularized explanation of reasons for grant or denial of CON. *Application of Holy Name Hosp.*, 301 N.J.Super 282, 693 A.2d 1259 (1997).

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

#### 8:33-4.15 Procedures for Commissioner review

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

(b) Pursuant to N.J.S.A. 26:2H-9, if the Commissioner denies a certificate of need application, 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.

(c) A request for a hearing shall be made to the Department within 30 days of receipt of notification of the Commissioner's decision. The hearing shall be conducted according to the Administrative Procedure Act, 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, and the record shall be limited to the documentary evidence presented to the reviewing agencies below. The Department shall arrange within 60 days of a request, for a hearing and after such hearing the Commissioner and or his or her designee shall furnish the applicant in writing the hearing examiner's 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.

(d) After the commencement of a hearing pursuant to (c) above, and before a decision is made, there shall be no ex parte contacts between any person acting on behalf of the applicant or holder of a certificate of need, or any person opposed to the issuance of a certificate of need, and any person in the Department who exercises any responsibility for reviewing the application. Ex parte communication is defined as an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given. It shall not include requests for status reports on any matter or proceeding. Any communications made after commencement of the fair hearing that are placed in the record of the proceedings are made available to all parties are not ex parte and are not prohibited.

(e) The Department shall notify, upon their request, providers of health services and other persons subject to certificate of need requirements of the status of the review of certificate of need applications, findings made in the course of such review, and other information respecting such review after the certificate of need is deemed complete for processing.

(f) If the Department determines that the holder of an unimplemented certificate is not making a good faith effort to implement the project, the Commissioner may null and void the certificate. Prior to such a determination, the Department shall notify the holder of the certificate of its intent to initiate the nullification process. The holder of the Certificate shall have 30 days from the date of such notice to submit written documentation of the substantial progress which has been made, and which will continue, in implementing the Certificate. If, after the review of the documentation submitted, a notice of nullification is nevertheless issued, the holder may request a hearing pursuant to (c) above.

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

Commissioner of Health's conclusory determinations were not sufficient to show that certificate of need was properly granted. In re Valley Hosp., 240 N.J.Super. 301, 573 A.2d 203 (A.D.1990), certification denied 126 N.J. 318, 598 A.2d 879.

State Health Planning Board's decision not to forward health care provider's certificate of need application to Commissioner of Health not reasonable. In the Matter of VNA of Central Jersey, 96 N.J.A.R.2d (HLT) 63.

#### 8:33-4.16 Conditions on approval/monitoring

(a) Conditions may be placed on certificate of need approval by the Commissioner if they relate to material presented in the application itself, are prescribed in State rules, relate to the criteria specified in N.J.A.C. 8:33-4.9 and 4.10 or promote the intent of the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., as amended. The State Health Planning Board shall not recommend the inclusion of conditions in a certificate of need approval which are not consistent with the provisions of this subchapter.

(b) Any conditions placed on a certificate of need approval shall become part of the licensure requirements of the approved facility. Failure to comply with conditions of approval may result in licensure action by the Department and may constitute an adequate basis for denying certificate of need applications by an applicant who is out of compliance with conditions on previous approvals. The applicant must contest any condition, if at all, within 30 days of receipt of notice. The applicant shall vacate his right to oppose said condition(s) if he fails to submit written notice that he contests any condition to the Department within this time. If the applicant contests a condition, the Commissioner shall suspend his or her approval of the certificate of need in order to consider the objection. Furthermore, the Commissioner has the right to nullify the approval of the certificate of need. The Commissioner may, at his or her discretion, consult with the State Health Planning Board to obtain its recommendation on the contested condition(s).