

CHAPTER 33F
CERTIFICATE OF NEED:
LONG TERM ACUTE CARE HOSPITALS

Authority

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

Source and Effective Date

R.2008 d.200, effective June 19, 2008.
See: 40 N.J.R. 965(a), 40 N.J.R. 4320(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 33F, Certificate of Need: Long Term Acute Care Hospitals, expires on December 16, 2015. See: 47 N.J.R. 1895(a).

Chapter Historical Note

Chapter 36A, Certificate of Need; Regional End-Stage Renal Disease, was adopted as R. 1977 d.398, effective October 25, 1977. See: 9 N.J.R. 518(c). Amendments were adopted as R.1980 d.34, effective January 17, 1980. See: 11 N.J.R. 545(c), 12 N.J.R. 75(c).

Chapter 36A, Certification of Need for Regional End-Stage Renal Disease, was recodified March 20, 1980, Chapter 33F.

Pursuant to Executive Order 66(1978), Chapter 33F, Renal Disease Services, was readopted as R.1985 d.602, effective January 14, 1985. See: 16 N.J.R. 3124(a), 17 N.J.R. 284(a).

Pursuant to Executive Order 66(1978), Chapter 33F, Renal Disease Services, was readopted as R.1989 d.602, effective November 16, 1989. See: 21 N.J.R. 2923(b), 21 N.J.R. 3973(a). Pursuant to Executive Order 66(1978), Chapter 33F, Renal Disease Services, expired on November 16, 1994.

Chapter 33F, Certificate of Need: Long Term Acute Care Hospitals, was adopted as R.2003 d.48, effective January 21, 2003. See: 34 N.J.R. 487(a), 35 N.J.R. 410(a).

Chapter 33F, Certificate of Need: Long Term Acute Care Hospitals, was readopted as R.2008 d.200, effective June 19, 2008. See: Source and Effective Date.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 33F, Certificate of Need: Long Term Acute Care Hospitals, was scheduled to expire on June 19, 2015. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 1. GENERAL PROVISIONS

8:33F-1.1 Scope and purpose

(a) The rules of this chapter specify the certificate of need requirements for all new long term acute care hospitals and

for all licensed long term acute care hospitals proposing to alter their licensed bed complement.

(b) A long term acute care hospital may be licensed by the Department of Health and Senior Services to provide long term acute care services either as a separately licensed "hospital within a hospital" or as a freestanding inpatient health care facility. All long term acute care hospitals shall provide or arrange for the provision of professional departments, services, facilities or functions in accordance with the long term acute care licensure standards at N.J.A.C. 8:43G-38.2(d).

(c) Any providers seeking to alter their licensed complement of long term acute care beds or any other providers proposing to establish services that will meet the licensing requirements for long term acute care contained in N.J.A.C. 8:43G-38, shall obtain certificate of need approval in accordance with the rules contained in this chapter.

8:33F-1.2 Definitions

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

"Applicant" means the applicant for a certificate of need to provide long term acute care services.

"Charity care" means hospital care paid for under the New Jersey Hospital Care Payment Assistance Program (Charity Care Assistance) which is free or reduced charge care that is provided to patients who receive inpatient or outpatient services at acute care hospitals throughout the State of New Jersey.

"Department" means the New Jersey Department of Health and Senior Services.

"Long term acute care hospital" means a category of special hospital that provides acute care through a broad spectrum of clinical care services for acutely ill/medically complex patients requiring, on average, a 25-day or greater length of stay. A long term acute care hospital may either be freestanding or a hospital within a hospital in accordance with the definitions identified at N.J.A.C. 8:43G-1.3(b)2i and ii.

"Medically indigent" means 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).

"Special hospital" means any hospital which assures the provision of comprehensive specialized diagnosis, care, treatment and rehabilitation where applicable on an inpatient basis for one or more specific categories and for a hospital that provides long term acute care through a broad spectrum of clinical care services for acutely ill/medically complex patients requiring, on average, a 25-day or greater length of

stay. Special hospitals do not include hospitals or hospital units providing comprehensive rehabilitation services and licensed in accordance with the provisions of N.J.A.C. 8:43H.

SUBCHAPTER 2. REQUIREMENTS

8:33F-2.1 Relationship between licensure and certificate of need requirements

The provisions of N.J.A.C. 8:43G-38, Long Term Acute Care Hospitals General Requirements, are hereby incorporated by reference. Applicants receiving certificate of need approval for long term acute care beds shall comply with all applicable requirements of N.J.A.C. 8:43G-38.

8:33F-2.2 Minimum size of facilities

(a) To promote the efficient use of resources, the minimum size for a new, freestanding long term acute care hospital shall be 50 beds.

(b) To promote the efficient use of resources, the minimum size for a non-freestanding long term acute care hospital that is located within another licensed hospital shall be 25 beds.

Amended by R.2006 d.106, effective March 20, 2006.
See: 37 N.J.R. 2282(a), 38 N.J.R. 1451(a).

In (a), decreased minimum number of beds from 60 beds to 50 beds.

8:33F-2.3 Requirements for expansion and new construction

(a) Certificate of need applications for new long term acute care hospitals or for bed additions to long term acute care hospitals shall be filed for expedited review with the Department in accordance with the provisions of N.J.A.C. 8:33, the Certificate of Need: Application and Review Process. The Department shall accept applications for long term acute care hospitals under the expedited review process from all qualified interested parties through March 20, 2009.

(b) The Department shall publish a long term acute care Statewide and hospital-specific bed need prior to accepting any expedited review certificate of need applications for the 36 month period as set forth in (a) above. The estimated bed need is calculated as follows:

1. New long term acute care beds shall be approved only where there is a documented bed need identified by the Department. Bed need shall be demonstrated by each applicant through presentation of written agreements with general hospitals that assign part or all of their LTAC bed need, as published by the Department.

2. Each applicant shall document, to the satisfaction of the Department, that all LTAC beds assigned to the applicant are unduplicated.
 - i. In the case of duplicative bed need agreements, if the duplicated agreement for assigned beds exceeds the assigning general hospital's LTAC bed need as com-

puted in (b) above, and its assignment is required to document an applicant's compliance with the minimum 80 percent target bed occupancy, the application will not be accepted for processing.

3. The Statewide and hospital-specific need for long term acute care beds shall be calculated by the Department in the following manner:
 - i. Step 1: In order to calculate the Statewide average length of stay (ALOS), compute the length of stay (LOS) measured in days for each hospital discharge, excluding all neonatal cases with diagnosis related group (DRG) codes 600 through 640;
 - ii. Step 2: Select all potential discharges to LTAC as those cases defined with LOS greater than the Statewide average length of stay (ALOS) (published by the Department) plus 15 days for the following 26 diagnosis related group (DRG) codes, as defined at N.J.A.C. 8:31B-3.77, considered typical LTAC DRG codes: 12, 14, 76, 79, 87, 88, 89, 90, 107, 110, 127, 130, 174, 236, 238, 263, 271, 277, 316, 320, 416, 462, 468, 475, 483, 486;
 - iii. Step 3: For those potential discharges to LTAC, compute the number of potential LTAC days as the portion of the LOS (for the patients selected in Step 2 above) that is over and above the ALOS; and
 - iv. Step 4: Compute the bed need by dividing the number of potential LTAC days by 365 days then divide this figure by the average target hospital occupancy rate of 80 percent.

(c) In addition to the bed need calculated in (b) above, applicants applying for certificate of need approval to establish a long term acute care facility shall demonstrate the ability to attain and maintain a minimum target occupancy rate of 80 percent. In attaining and maintaining such a rate, consideration of the following factors will be given:

1. Each applicant shall provide written patient referral/transfer agreements from hospitals that agree to transfer patients eligible for LTAC. These agreements shall demonstrate the minimum target occupancy rate of 80 percent will be achieved based on the proposed bed complement of the applicant's long term acute care hospital.

2. Hospitals referring patients to the applicant shall be located within a one-hour travel time which shall be computed on an off-peak basis.

3. Patient choice shall not be limited by the terms of any patient referral/transfer agreement between a hospital and long term acute care facility.

(d) Certificate of need applications for long term acute care beds may be submitted to the Department through March 20, 2009. After this period, certificate of need applications shall only be accepted if at least 75 percent of the awarded certificate of need applicants for long term acute care beds have been implemented by licensure approval of occupancy except in the case of the following:

1. An applicant awarded a certificate of need which notifies the Department of its intent not to implement its certificate of need prior to the expiration date, thereby allowing the Department to accept additional applications for the purpose of either increasing present bed capacity or establishing a new facility; or

2. Expiration of an awarded certificate of need without implementation of the project within the specified time period.

(e) When at least 75 percent of the total certificates of need awarded in response to applications submitted through March 20, 2009 have been implemented by licensing approval for occupancy, the Department shall accept applications according to the following standards:

1. An applicant proposing a bed addition at an existing long term acute care facility shall provide evidence that the average occupancy rate for the existing licensed long term acute care beds for the six most recent quarters prior to submission of the certificate of need application exceeds 85 percent. All data upon which these occupancy rates are based shall be consistent with the hospital statistics as reported to the Department's Facility Information Systems Program on Share Quarterly Inpatient Utilization Report (B-2) forms, unless the applicant can demonstrate to the Department with verifiable evidence that there are inaccuracies in the statistical information which was reported. Bed additions at the existing facility will be permitted to add the number of beds to the minimum target occupancy rate of 80 percent. The formula for this calculation shall be as follows:

$$\left(\frac{\text{Maximum LTAC Bed Addition}}{\text{LTAC Bed Complement}} \right) = \left(\frac{\text{AVG}}{0.80} - 1 \right)$$

where "AVG" is the "average quarterly occupancy rate for the six most recent quarters."

2. An applicant proposing to establish a newly licensed long term acute care hospital shall be reviewed according to the methodology specified in (b) and (c) above. Such applications shall only be accepted for processing if all existing long term acute care hospitals within one hour (non-peak) travel time of the applicant have been operating at 80 percent occupancy of their licensed beds for the latest four quarters of utilization data submitted to the Department.

(f) A certificate of need awarded to provide long term acute care services shall remain valid two years from its issuance. The Commissioner may consider a longer time period for certificates of need that require new construction to implement their project.

Amended by R.2006 d.106, effective March 20, 2006.

See: 37 N.J.R. 2282(a), 38 N.J.R. 1451(a).

In (a), changed the period of time for application acceptance from 18 months after January 21, 2003 to "through March 20, 2009"; in introductory paragraph (b), changed phase from initial 18-month period to 36-month period and deleted "subsection"; in introductory paragraph (d), extended period for application submission from 18 months after January 21, 2003 to "through March 20, 2009"; in introductory paragraph (e), changed phase from initial 18-month period following January 21, 2003 to "through March 20, 2009".

Public Notice: Health Care Quality and Oversight Branch; Health Care Quality and Oversight Division: Certificate of Need and Acute Care Licensure Program: Invitation for certificate of need applications for the establishment of special hospitals providing long-term acute care (LTAC) services.

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

8:33F-2.4 Accessibility of care for Medicaid and medically indigent patients

(a) Long term acute care facility services shall not be covered by fee-for-service payments under the New Jersey Medicaid Program, including NJ FamilyCare. Costs associated with these services shall not be reimbursable.

(b) Long term acute care patients shall not be eligible for State charity care subsidies in accordance with P.L. 1997, c.263.

(c) Long term acute care patients shall not be denied admission to an LTAC on the basis of their inability to pay in accordance with the Hospital Licensing Standards at N.J.A.C. 8:43G-5.2(b) and (c).

8:33F-2.5 Long term acute care hospital data reporting

Every hospital licensed to provide long term acute care in accordance with this chapter shall maintain and provide statistical data on the operation of the program and report those data to the Department of Health and Senior Services on a schedule and in a standardized format determined by the Department. In addition, Uniform Bill Patient Summary (UBPS) data for these patients shall be submitted in accordance with the provisions of N.J.A.C. 8:31B-2. Copies of the full text of the required reporting forms may be obtained upon written request to the New Jersey State Department of Health and Senior Services, Division of Health Care Systems Analysis, Health Care Financing Systems Program, PO Box 360, Trenton, New Jersey 08625-0360.

APPENDIX A (RESERVED)

Repealed by R.1990 d.566, effective November 19, 1990. See: 22 N.J.R. 2494(a), 22 N.J.R. 3578(a).

APPENDIX B

Amended by R.1986 d.113, effective April 7, 1986. See: 17 N.J.R. 2948(a), 18 N.J.R. 677(a).

Repealed Appendix B and recodified Appendix C to B.