

**CHAPTER 33H**  
**CERTIFICATE OF NEED: POLICY MANUAL**  
**FOR LONG TERM CARE SERVICES**

**Authority**

N.J.S.A. 26:2H-1 et seq., as amended by P.L. 1998, c.43.

**Source and Effective Date**

R.2004 d.354, effective August 25, 2004.  
 See: 36 N.J.R. 1641(a), 36 N.J.R. 4306(a).

**Chapter Expiration Date**

Pursuant to Executive Order No. 1(2010), the chapter expiration date is extended from February 21, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

**Chapter Historical Note**

Chapter 33H, Certificate of Need: Reviews of Long-Term Care Facilities and Services, was adopted as R.1980 d.404, effective September 18, 1980. See: 12 N.J.R. 393(a), 12 N.J.R. 579(b).

Pursuant to Executive Order No. 66(1978), Chapter 33H was readopted as R.1985 d.413, effective July 19, 1985. See: 17 N.J.R. 1216(a), 17 N.J.R. 2034(a).

Pursuant to Executive Order No. 66(1978), Chapter 33H, Certificate of Need: Reviews of Long-Term Care Facilities and Services, was readopted as R.1990 d.303, effective May 16, 1990. See: 22 N.J.R. 897(a), 22 N.J.R. 1938(a).

Chapter 33H, Certificate of Need: Reviews of Long-Term Care Facilities and Services, was repealed and a new Chapter 33H, Certificate of Need Policy Manual for Long Term Care Services, was adopted by R.1992 d.344, effective September 8, 1992. See: 24 N.J.R. 2014(a), 24 N.J.R. 3144(a).

Pursuant to Executive Order No. 66(1978), Chapter 33H, Certificate of Need Policy Manual for Long Term Care Services, expired on September 8, 1997.

Chapter 33H, Certificate of Need: Policy Manual for Long Term Care Services, was adopted as new rules by R.1998 d.134, effective March 16, 1998. See: 29 N.J.R. 3794(a), 30 N.J.R. 1085(a).

Pursuant to Executive Order No. 66(1978), Chapter 33H, Certificate of Need: Policy Manual for Long Term Care Services, was readopted as R.2001 d.104, effective March 1, 2001. See: 32 N.J.R. 4071(a), 33 N.J.R. 1101(a).

Chapter 33H, Certificate of Need: Policy Manual for Long Term Care Services, was readopted as R.2004 d.354, effective August 25, 2004. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 33H, Certificate of Need: Policy Manual for Long Term Care Services, was scheduled to expire on February 21, 2010. See: 41 N.J.R. 3348(a).

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**8:33H-1.1 Purpose; scope**

(a) The purpose of this chapter is to set forth Certificate of Need and related planning requirements for long-term care services.

(b) The Department has a major responsibility for the promotion of high quality, efficiently and economically rendered health services which are available to all citizens of the State. To ensure significant progress toward the achievement of this goal, the Department should direct planning and Certificate of Need activities toward the following:

1. Health promotion and minimization of debilitation;
2. Enhancement of the quality of life of long-term care consumers/patients and their families and/or significant others;
3. Expansion of both general and specialized long-term care options to maximize consumer choice;
4. Increased geographic, economic, and architectural accessibility of long-term care services;
5. Expansion of long-term care services to the extent that they are needed, while minimizing excess, underutilized capacity;
6. Increased affordability of long-term care services, the cost of which must be borne by consumers and the government;
7. Access to long-term care services without regard to race, ethnicity, or medical diagnoses, including HIV infection or a history of psychiatric illness;
8. Coordination of long-term care services; and
9. Community participation in decision-making about the development of expanded long-term care services.

(c) The rules contained in this chapter address the Certificate of Need requirements for the following categories and types of facilities, as they are defined in N.J.A.C. 8:33H-1.2:

1. Nursing homes;
2. Comprehensive personal care homes;
3. Pediatric long-term care;
4. Specialized long-term care;
5. Assisted living residences;
6. Assisted living programs; and
7. Statewide restricted admissions facilities.

(d) Home health care is recognized as an important component of the long-term care system; however, the Certificate of Need requirements for home health care agencies are not contained in this chapter. Applicants interested in offering home health services in New Jersey should refer to N.J.A.C. 8:33-4.1(a). However, applications for this service will only be accepted in response to a call issued by the Department and published in the New Jersey Register.

(e) Some patients in nursing homes may, on occasion, require rehabilitative care. The rehabilitative services offered to patients in most nursing homes are distinguished from comprehensive rehabilitation, which may only be offered by a licensed rehabilitation hospital. Applicants interested in offering comprehensive rehabilitation should refer to N.J.A.C. 8:33M and 8:33-4.1(a). However, applications for this service will only be accepted in response to a call issued by the Department and published in the New Jersey Register.

(f) The provisions contained in this chapter shall apply uniformly to Certificate of Need applications for private and public facilities, whether State, county, municipal, incorporated, not incorporated, proprietary, or nonprofit, unless it is otherwise stated.

(g) Where a Certificate of Need is granted for long-term care beds, the applicant shall agree to occupy those beds with residents who require general nursing home care or, if so designated in the letter of approval, specialized long-term care. Applicants approved for long-term care beds shall not admit residents who require a different licensing category of care, such as comprehensive rehabilitation, unless the Commissioner has determined that admission is warranted to respond to an emergency situation and has granted approval in writing.

1. Applicants shall not advertise their facilities' services in such a way that consumers might reasonably construe that the level of care provided is something other than general nursing home care or, if so designated in the letter of approval, specialized long-term care.

Amended by R.1993 d.671, effective December 20, 1993.  
See: 25 N.J.R. 3719(a), 25 N.J.R. 6031(a).  
Amended by R.2004 d.354, effective September 20, 2004.  
See: 36 N.J.R. 1641(a), 36 N.J.R. 4306(a).

In (b), inserted "both general and specialized" following "Expansion of" in 3; in (c), deleted 8 to 10; in (d) and (e), amended the N.J.A.C. reference and added last the sentence; in (g), substituted "residents" for "patients" throughout.

#### Case Notes

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.

#### 8:33H-1.2 Definitions

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

"Aging in place" means a process whereby individuals remain in their living environment despite the physical and/or mental decline and growing needs for supportive services that may occur in the course of aging. For aging in place to occur, services are added, increased, or adjusted to compensate for the person's physical and/or mental decline.

"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 (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" means a coordinated array of supportive personal and health services, available 24 hours per day, to residents who have been assessed to need these services, including residents who require formal long-term care. Assisted living promotes resident self-direction and participation in decisions that emphasize independence, individuality, privacy, dignity, and homelike surroundings.

"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 program provider" means an organization licensed by the New Jersey Department of Health and Senior Services, in accordance with N.J.A.C. 8:36, to provide all services required of an assisted living program.

"Assisted living residence" means a facility which is licensed by the Department, in accordance with N.J.A.C. 8:36, 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.