

**8:33H-1.12 Residential health care facilities**

An applicant proposing a new residential health care facility shall submit a Certificate of Need application for expedited review, in accordance with the applicable provisions of N.J.A.C. 8:33. The applicant shall comply with the applicable utilization requirements for Supplemental Security Income recipients and former psychiatric patients, in accordance with N.J.A.C. 8:33H-1.15.

Amended by R.1993 d.671, effective December 20, 1993.  
See: 25 N.J.R. 3719(a), 25 N.J.R. 6031(a).

**8:33H-1.13 Conversion or elimination of licensed or Certificate of Need approved beds or services**

(a) Applicants proposing to convert any licensed beds shall submit schematic plans with a floor layout of the facility, illustrating how the proposed conversion will be accomplished. In order to assure that the bed conversion can be implemented in accordance with health facility construction standards, it is recommended that applicants consult with the Department of Community Affairs, Health Care Plan Review Program, prior to submitting a certificate of need application. Applications for bed conversions that are submitted without schematic plans shall be deemed incomplete.

(b) Applicants for the conversion of residential health care beds to long-term care beds shall document a commitment to enabling current residents to continue occupying their assigned beds until or unless a permanent relocation placement is requested by the resident.

1. The mixing of residential health care and long-term care beds within one or more units as a consequence of implementing a Certificate of Need to convert or eliminate beds may be permitted if necessary in order to avoid relocating or discharging residents who do not wish to move.

(c) An applicant whose project entails the discharge or permanent relocation of patients in order to effect the conversion or elimination of licensed beds shall provide compelling documentation, to the satisfaction of the Commissioner, that a greater public benefit is to be obtained from the proposed conversion or elimination of beds than would be obtained if the existing licensed bed complement were maintained. This documentation shall be submitted not only by applicants who propose to discharge or permanently relocate a specified number of patients upon receiving Certificate of Need approval, but also by any applicant who has discharged or relocated more than 25 percent of the residents of the beds in question during the 12 month period prior to submission of the Certificate of Need application for a bed conversion or elimination. Compelling documentation of public benefit may include, but shall not be limited to, the following:

1. Letters supporting the discharge or relocation of patients which are submitted by the patients themselves,

their family members or significant others, and/or the patients' health care providers;

2. Evidence that patients' quality of life and/or care would either deteriorate if they were permitted to remain in the facility, or that it would improve as a result of their being discharged or relocated to other facilities;

3. Evidence that the quality of life and/or care of those patients who will remain as residents in the facility would either deteriorate unless the proposed beds are converted or eliminated, or substantially improve as a result of eliminating or converting the beds in question; and

4. Evidence that the relocation will afford patients' family members and significant others convenient access for visitation purposes; that is, the facility to which most patients are expected to be relocated shall be situated in an area that has readily available public transportation and/or easy access to major roadways.

(d) An exception to the documentation requirement in (c) above may be granted by the Commissioner in the case where an applicant proposes to completely and permanently close the facility in question and/or to cease operating as any type of health care facility. The applicant shall nonetheless comply with the requirements in (f) below, to the extent that they are applicable.

(e) Certificate of Need applications proposing the conversion of residential health care beds to long-term care beds may be approved provided that the county in which the applicant's facility is located has a documented nursing home bed need in accordance with N.J.A.C. 8:33H-1.3(g) and consistent with the county Long-Term Care Committee's placement mix proposal.

(f) Certificate of Need applications proposing the conversion of residential health care beds to long-term care beds shall meet the following requirements:

1. If the project entails the relocation of patients from the facility, the applicant shall provide documentation of a transfer agreement with at least one other residential health care facility in the area that maintains admission policies, offers amenities, and charges fees which are similar to those of the applicant's residential health care facility. Furthermore, the applicant shall provide documentation that the residential health care facility which is the subject of the transfer agreement has the willingness and bed capacity to accommodate those patients who might be transferred from the applicant's facility, including Supplemental Security Income recipients and discharged psychiatric patients;

2. If the applicant's facility currently has patients occupying residential health care beds who may require or desire relocation, the applicant agrees to provide all necessary social service assistance to effect the relocation in a manner that maximizes consumer choice of place-

ment alternatives. The applicant shall bear the cost of relocating patients as necessary and shall make arrangements for any residential health care resident at the facility who wishes to visit other residential health care facilities in the area, prior to making a relocation decision; and

3. The Certificate of Need application complies with all other applicable requirements in this chapter.

(g) The conversion of specialized care beds to general long-term care beds or to another specialized care use may be considered for approval, provided that the following conditions are met:

1. The applicant provides evidence, to the satisfaction of the Department, that good faith efforts have been made to implement the existing specialized care unit as it was originally approved, for a period of at least 18 months prior to submission of the Certificate of Need application for conversion. Evidence shall include:

- i. Records of efforts to establish appropriate referral sources and transfer agreements;
- ii. Records of efforts to negotiate reimbursement rates with third party payors including Medicaid; and
- iii. Without disclosing names or otherwise publicly divulging individuals' identities, a verifiable listing of all patients referred for admission over the 12 month period prior to application submission. The listing shall include each patient's age, medical diagnoses, county of residence, payment source, and clinical care needs. For each patient, the applicant shall indicate whether the patient was admitted to the special care unit, and if not, the reason why admission was denied and the name of the facility where the patient was finally placed; and
- iv. A description of all efforts to recruit and train staff for the unit.

(h) A Certificate of Need application proposing the conversion of acute care hospital beds to general or specialized long-term care beds may be approved provided that the following conditions are met:

1. The county in which the hospital is located has a documented nursing home bed need in accordance with N.J.A.C. 8:33H-1.3(g) and consistent with the county Long-Term Care Committee's placement mix proposal.
2. The project entails a permanent conversion of beds located on one or more distinct nursing units (that is the creation of so-called "swing beds" shall not be approved);
3. The applicant documents plans for providing a suitable, home like living environment for long-stay patients or agrees to adopt admission policies limiting utilization of the proposed long-term care beds to patients whose stays can reasonably be expected to be less than 100 days;

4. The capital cost of converting the acute care beds is less than that of new nursing facility construction; and

5. The Certificate of Need application complies with all other applicable requirements in this chapter.

Amended by R.1993 d.671, effective December 20, 1993.  
See: 25 N.J.R. 3719(a), 25 N.J.R. 6031(a).

#### Case Notes

Nursing home operator was entitled to use variance for construction of congregate care housing facility adjunctive to nursing home, even though facility was to be run for profit. *Jayber, Inc. v. Municipal Council of Tp. of West Orange*, 238 N.J.Super. 165, 569 A.2d 304 (A.D.1990), certification denied 122 N.J. 142, 584 A.2d 214, certification denied 122 N.J. 142, 584 A.2d 215.

#### 8:33H-1.14 Quality of care and licensure track record requirements for long-term care, assisted living residences, comprehensive personal care homes, and residential health care facilities

(a) The licensure "track record" of an applicant shall be evaluated by the Department to determine whether the applicant's proposed project may be approved. The criteria for this examination are set forth at N.J.A.C. 8:33.

Amended by R.1993 d.671, effective December 20, 1993.  
See: 25 N.J.R. 3719(a), 25 N.J.R. 6031(a).

#### Case Notes

Regulation mandating rejection of county hospital's certificate of need application, based upon numerous federal "Level A" deficiencies in patient care, did not violate hospital's due process rights, despite pending appeal of deficiency assessment; state was responsible for assuring availability of highest quality health care services. In re Certificate of Need Granted to the Harborage, 300 N.J.Super. 363, 693 A.2d 133 (A.D.1997).

Application of subsidiary for certificate of need properly based on track record of other subsidiaries owned by parent corporation. *Matter of Old Bridge Manor*, 95 N.J.A.R.2d (HLT) 1.

Refusal to admit HIV-positive patient; denial of Certificate of Need sought by nursing center also owned by owner of center refusing admission to patient. *Yihoshna, Inc., t/a Manahawkin Convalescent Center v. Department of Health*. 93 N.J.A.R.2d (HLT) 9.

#### 8:33H-1.15 Utilization requirements for Medicaid-eligible patients, Supplemental Security Income (SSI) recipients, and former psychiatric patients

(a) Applicants receiving certificate of need approval to add general or specialized long-term care beds to an existing facility or to construct a new nursing home or a replacement facility shall comply with the following utilization requirements:

1. Within one year from license issuance, a minimum of 36 percent of the total general long-term care bed complement shall be occupied by direct admission Medicaid-eligible patients, as defined in N.J.A.C. 8:33H-1.2. The facility shall continue to maintain at least 36 percent Medicaid-eligible direct admissions in its general long-term care beds annually thereafter.