

HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

Notice of Readoption

Certificate of Need: Application Review Process

Readoption with Technical Changes: N.J.A.C. 8:33

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

Authorized By: Judith M. Persichilli, RN, BSN, MA, Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Effective Date: , 2022.

New Expiration Date: , 2029.

Take notice that, pursuant to N.J.S.A. 52:14B-5.1, the Commissioner (Commissioner) of the Department of Health (Department) hereby readopts N.J.A.C. 8:33, Certificate of Need: Application Review Process, which was to expire on June 18, 2022.

The Department is making technical changes upon readoption. References to the Department of Health and Senior Services would be replaced throughout the chapter with the Department of Health pursuant to the renaming of the Department in P.L. 2012, c. 17. In 2012, N.J.S.A. 30:1A-14 transferred to the Division of Aging Services (DoAS), in the Department of Human Services, the powers and duties of the Department of Health and Senior Services that relate to the provision of programs or services for senior citizens, the New Jersey State Commission on Aging, the Division on Aging and Community Services, and any other division relating to senior benefits.

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The Department is developing rulemaking to revise, update, and reorganize existing N.J.A.C. 8:33, and anticipates filing this rulemaking with the Office of Administrative Law for processing in the ordinary course. However, the Public Health Emergency had necessitated the reallocation of Department personnel and resources to pandemic response activities, which resulted in the Department being unable to finalize the anticipated rulemaking prior to chapter expiration.

Following is a summary of the rules proposed for readoption:

N.J.A.C. 8:33 establishes the review process for certificate of need applications.

Subchapter 1 would continue to set forth the general provisions of the chapter, including the scope and purpose (N.J.A.C. 8:33-1.1); general statements regarding the public policy of the State and rules of general application with respect to the certificate of need process (N.J.A.C. 8:33-1.2); and definitions (N.J.A.C. 8:33-1.3).

Subchapter 2 provides a description of the applicability of certificate of need requirements, including the two types of certificate of need review, full and expedited review, and whether a particular health care entity or modality of health care would be subject to the provisions of the Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq.).

Subchapter 3 includes N.J.A.C. 8:33-3.1, which describes the types of certificate of need applications, including the initiation of a health care service. N.J.A.C. 8:33-3.2 describes the termination or discontinuance of a service or facility and the reduction of licensed bed capacity. N.J.A.C. 8:33-3.3 describes transfers of ownership of a facility or service. N.J.A.C. 8:33-3.4 describes changes in licensed beds or services. N.J.A.C.

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8:33-3.5 describes buildings requirements. N.J.A.C. 8:33-3.7 and 3.8 address major and minor moveable equipment requirements, respectively. N.J.A.C. 8:33-3.9 establishes requirements for changes in cost and/or scope of the project. The subchapter also includes a section that describes the criteria for the duration of an unimplemented certificate of need (N.J.A.C. 8:33-3.10). N.J.A.C. 8:33-3.11 addresses demonstration and research projects.

Subchapter 4 would continue to detail the administrative process for the full certificate of need review process, including certificate of need application review cycles and a schedule of submission dates for batched certificate of need applications (N.J.A.C. 8:33-4.1(a)). Specifically, the full review process for non-batched applications would continue to include 12 review cycles, with the beginning of each cycle scheduled to take place on the first business day of each month (N.J.A.C. 8:33-4.1(a)1). N.J.A.C. 8:33-4.1(a)2 would continue to identify the full review schedule for batched applications including the deadline for submission dates. N.J.A.C. 8:33-4.1(a)3 would continue to note that acceptance of batched applications does not constitute a finding by the Department of need for additional beds or services. N.J.A.C. 8:33-4.1(a)4 would continue to provide for special calls by the Commissioner of the Department (Commissioner) for services with longer than annual submission schedules upon a finding of extraordinary circumstances. N.J.A.C. 8:33-4.1(a)5 would continue to provide for the Department's review of the schedule for adequacy at least every five years. N.J.A.C. 8:33-4.1(a)6 would continue to require new cardiac surgery services to follow the procedures specified at N.J.A.C. 8:33E.

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N.J.A.C. 8:33-4.1(b) would continue to require the Commissioner to render a decision on expedited review applications no later than 90 days after the beginning of each review cycle, unless otherwise specified by rule or notice. The readoption would also require the Department to review on an annual basis its compliance with the 90-day review timeframe (N.J.A.C. 8:33-4.1(c)). Potential certificate of need applicants would continue to be encouraged to contact the Department to examine the relationship of a project with applicable plans, guidelines, and criteria (N.J.A.C. 8:33-4.2).

N.J.A.C. 8:33-4.3 provides for the number of certificate of need applications that are required to be submitted to the Department, as well as the contact information and application fees, which are proposed for amendment as noted below.

N.J.A.C. 8:33-4.4 would continue to provide general filing requirements, including: proof of ownership of the proposed site (N.J.A.C. 8:33-4.4(a)); identification of all principals involved in the ownership of the proposed facility (N.J.A.C. 8:33-4.4(b)); the name and address of the registered agent, if the applicant is a registered corporation (N.J.A.C. 8:33-4.4(c)); the requirement that the proposed operator of the facility file and sign the application (N.J.A.C. 8:33-4.4(d)); and, that the Department would determine the application not acceptable for processing in the event the applicant fails to fully comply with the general filing provisions of this section (N.J.A.C. 8:33-4.4(e)).

N.J.A.C. 8:33-4.5 provides for a completeness review process and N.J.A.C. 8:33-4.6 provides the criteria for modification of a certificate of need application once it has been submitted to the Department.

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N.J.A.C. 8:33-4.7 and 4.8 set forth the policies regarding the deferral of applications and the withdrawal of applications, respectively. N.J.A.C. 8:33-4.9 sets forth the general criteria for certificate of need review.

N.J.A.C. 8:33-4.10 contains specific criteria for review, including the promotion of access to care by low income, racial and ethnic minorities, [page=321] women, disabled persons, and persons with HIV infections. This section would continue to include track record provisions to assure character and competence and quality of care. N.J.A.C. 8:33-4.11 and 4.12 would continue as reserved sections. N.J.A.C. 8:33-4.13 would continue to set forth the role of the State Health Planning Board in certificate of need applications that are subject to full review. N.J.A.C. 8:33-4.14 would continue to be reserved. N.J.A.C. 8:33-4.15 would continue to set forth the procedures for the Commissioner's review. N.J.A.C. 8:33-4.16 would continue to set forth policies regarding the placement of conditions on certificate of need approvals.

Subchapter 5 sets forth the Department's expedited certificate of need review process. N.J.A.C. 8:33-5.1(a) would continue to provide a list of health care service categories that are to be evaluated by the Department under the expedited review process. N.J.A.C. 8:33-5.1(b) would continue to permit the expedited review process to be used in lieu of the full review process in emergency situations that demand rapid action or for those projects where there is minimal impact on the health care system as a whole. N.J.A.C. 8:33-5.2 would continue to set forth the manner in which expedited review applications are processed. N.J.A.C. 8:33-5.3 would continue to set forth the general requirements that are to be included in expedited review applications. N.J.A.C.

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8:33-5.4 would continue to set forth specific requirements for expedited review applications.

Subchapter 6 would continue to set forth the health care services that are exempt from the certificate of need process that are consistent with the provisions of the Health Care Facilities Planning Act, as amended. N.J.S.A. 26:2H-7.a.

Subchapter 7 would continue to be reserved.

N.J.A.C. 8:33 Appendix A includes exhibits that list the types of health care services that continue to require a certificate of need (Exhibit 1), that provide examples of major movable equipment (Exhibit 2), and that provide a summary listing of certificate of need activities and the type of certificate of need review that is required or if the activity is exempt from the review requirement (Exhibit 3).

N.J.A.C. 8:33 Appendix B contains form CN-1, Full Review Certificate of Need Application for Long Term Care Facilities: General Long Term Care Beds; Specialized Long Term Care Beds.

N.J.A.C. 8:33 Appendix C contains form CN-3, Certificate of Need Application for Hospital-Related Projects.

N.J.A.C. 8:33 Appendix D contains form CN-4, Certificate of Need Application for Designation as a Perinatal Facility.

N.J.A.C. 8:33 Appendix E contains form CN-19, Certificate of Need Application - Expedited Review for Facilities and Services Identified at N.J.A.C. 8:33-5.1(a).

The Commissioner has reviewed N.J.A.C. 8:33 and has determined that, pending the finalization of the anticipated rulemaking described above, the existing chapter

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remains necessary, proper, reasonable, efficient, understandable, and responsive to the purposes for which the Department originally promulgated it, as amended and supplemented over time, and should be readopted with technical changes.

Therefore, pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 8:33 is readopted and shall continue in effect for seven years.

Full text of the technical changes follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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:

....

"Commissioner" means the State Commissioner of Health [and Senior Services].

....

8:33-4.2 Development of Applications

(a) (No change.)

(b) The certificate of need application forms are available through the following methods:

1. Electronically at the Department's "Forms" webpage at <http://nj.gov/health/forms>;
2. Attached at the end of this chapter as Appendices B through E, which are incorporated herein by reference;
3. Upon written request to:

Director

Office of Certificate of Need and Healthcare Facility Licensure

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(c) (No change.)

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