

3701-12-01 **Definitions.**

As used in Chapter 3701-12 of the Administrative Code:

(A) "Actual harm, but not immediate jeopardy deficiency" means a deficiency that, under 42 C.F.R. 488.404, either constitutes a pattern of deficiencies resulting in actual harm that is not immediate jeopardy or represents widespread deficiencies resulting in actual harm that is not immediate jeopardy.

(B) Except as otherwise provided in sections 3702.51 to 3702.62 of the Revised Code, "affected person" means:

(1) An applicant for a certificate of need, including an applicant whose application was reviewed comparatively with the application in question;

(2) Any person that resides or regularly uses long-term care facilities within the geographic area served or to be served by the long-term care services that would be provided under the certificate of need or reviewability ruling in question;

(3) Any long-term care facility that is located in the service area where the long-term care services would be provided under the certificate of need or reviewability ruling in question;

(4) The person that requested the reviewability ruling in question; or

(5) Third-party payers that reimburse long-term care facilities for services in the service area where the long-term care services would be provided under the certificate of need or reviewability ruling in question.

(C) "Affiliated person" means a corporation, business trust, estate, firm, partnership, association, joint stock company, insurance company, limited liability company, government unit, or other entity that:

(1) Has an ownership or beneficial ownership interest, either direct or indirect, of five per cent or more of the voting stock of the person transferring a certificate of need (PTCN);

(2) Participates as a general, junior, or limited partner in a partnership with the PTCN;

(3) Shares a common officer, director, member, trustee, or partner with the PTCN;

(4) Shares twenty-five per cent or more of its employees with the PTCN;

(5) Loans twenty-five per cent or more of the total capital needed to implement the activity, either directly or through a loan guarantee or similar arrangement, to the PTCN;

- (6) Locates the site or allows the location of the site of the activity on its campus or on its property; or
- (7) Enters an agreement with the PTCN to use its name as part of the name of the health care facility or service:
- (a) As part of the implementation of the activity; or
- (b) In advertising or promotional material that holds the facility or service out as being operated or offered by it or on behalf of it.
- (D) "Applicant" means any person that submits an application for a certificate of need or reviewability determination request and who is designated in the application as the applicant.
- (E) "Bed capacity" means the total number of long-term care beds authorized at a long-term care facility.
- (F) "Certificate of need" means a written approval granted by the director to an applicant to authorize conducting a reviewable activity.
- (G) "County nursing home" has the same meaning as in section 5155.31 of the Revised Code.
- (H) "Director" means the director of health or an authorized designee of the director.
- (I) "Existing long-term care facility" means either of the following:
- (1) A long-term care facility that is licensed or otherwise authorized to operate in this state in accordance with applicable law, including a county home or a county nursing home that is certified under Title XVIII or Title XIX of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, that is staffed and equipped to provide long-term care services, and is actively providing long-term care services; or
- (2) A long-term care facility that is licensed or otherwise authorized to operate in this state in accordance with applicable law, including a county home or a county nursing home that is certified under Title XVIII or Title XIX of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, or has beds registered under section 3701.07 of the Revised Code as skilled nursing beds or long-term care beds and has provided long-term care services for at least three hundred sixty-five consecutive days within the twenty-four months immediately preceding the date a certificate of need application is filed with the director of health.
- (J) "Existing bed" or "existing long-term care bed" means a bed from an existing

long-term care facility, a bed described in paragraph (O) (5) of this rule, or a bed correctly reported as a long-term care bed pursuant to section 5155.38 of the Revised Code.

(K) "Facility" means long-term care facility as defined in paragraph (P) of this rule.

(L) "Government unit" means the state of Ohio and any county, municipal corporation, township, or other political subdivision of the state, or any department, division, board, or other agency of any of the foregoing.

(M) "Health maintenance organization" or "HMO" means a public or private organization organized under the law of any state that is qualified under section 1310(d) of Title XIII of the "Public Health Service Act," 87 Stat. 931 (1973), 42 U.S.C. section 300e-9.

(N) "Immediate jeopardy deficiency" means a deficiency that, under 42 C.F.R. 488.404, either constitutes a pattern of deficiencies resulting in immediate jeopardy to resident health or safety or represents widespread deficiencies resulting in immediate jeopardy to resident health or safety.

(O) "Long-term care bed" or "bed" means a bed that is categorized as one of the following:

(1) A bed that is located in a facility that is a nursing home licensed under section 3721.02 of the Revised Code or a facility licensed by a political subdivision certified under section 3721.09 of the Revised Code;

(2) A bed that is located in the portion of any facility, including a county home or county nursing home, that is certified as a skilled nursing facility under the medicare program or a nursing facility under the medicaid program and is included in the authorized maximum certified capacity of that portion of the facility;

(3) A bed that is registered under section 3701.07 of the Revised Code as a skilled nursing bed, a long-term care bed, or a special skilled nursing bed;

(4) A bed in a county home or county nursing home that has been certified under section 5155.38 of the Revised Code as having been in operation on July 1, 1993, and is eligible for licensure as a nursing home bed; or

(5) A bed held as an approved bed under a certificate of need approved by the director.

(P) "Long-term care facility" means any of the following:

(1) A nursing home licensed under section 3721.02 of the Revised Code or by a political subdivision certified under section 3721.09 of the Revised Code;

- (2) The portion of any facility, including a county home or a county nursing home, that is certified as a skilled nursing facility or a nursing facility under Title XVIII or XIX of the Social Security Act; or
- (3) The portion of any hospital that contains beds registered under section 3701.07 of the Revised Code as skilled nursing beds or long-term care beds.
- (Q) "New long-term care facility" means any proposed long-term care facility defined in paragraph (P) of this rule that is not an existing long-term care facility as defined in paragraph (I) of this rule.
- (R) "Person" means any individual, corporation, business trust, estate, firm, partnership, association, joint stock company, limited liability company, insurance company, government unit or other entity.
- (S) "Physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the state of Ohio.
- (T) "Political subdivision" means a municipal corporation, township, county, school district, and all other bodies corporate and politic responsible for governmental activities only in the geographic areas smaller than that of the state to which the sovereign immunity of the state attaches.
- (U) "Primary service area" the geographic region, usually comprised of the Ohio zip code in which the long-term care facility is located and contiguous zip codes, from which approximately seventy-five to eighty per cent of the facility's residents currently originate or are expected to originate.
- (V) "Principal participant" means both of the following:
- (1) A person who has an ownership or controlling interest of at least five per cent in an applicant, in a long-term care facility that is the subject of an application for a certificate of need, or in the owner or operator of the applicant or such a facility; or
 - (2) An officer, director, trustee, or general partner of an applicant, of a long-term care facility that is the subject of an application for a certificate of need, or of the owner or operator of the applicant or such a facility.
- (W) "PTCN" is an acronym for "person transferring a certificate of need" and refers to a person holding a certificate of need issued on or after April 20, 1995, that transfers the certificate to another person before the reviewable activity is completed, or that enters into an agreement that contemplates the transfer of the certificate of need on the completion of the reviewable activity.
- (X) "Related person" means an affiliated person or an individual who, by virtue of blood

or adoption, is the spouse, father, mother, sister, brother, half-sister, half-brother, grandmother, grandfather, or first cousin of a PTCN.

(Y) "Review" means the process by which the director of health examines a certificate of need application to determine whether a certificate of need for the activity will be granted.

(Z) "Reviewability ruling" means a ruling issued by the director of health under division (A) of section 3702.52 of the Revised Code as to whether a particular proposed project is or is not a reviewable activity.

(AA) "Secondary service area" means the geographic region, usually comprised of Ohio zip codes not included in the primary service area, excluding isolated exceptions, from which the facility's remaining residents currently originate or are expected to originate.

(BB) "Service area" means the current and projected primary and secondary service areas to which the long-term care facility is, or will be, providing long-term care services.

(CC) "State agency" means the director.

(DD) "Third-party payer" means a health insuring corporation licensed under Chapter 1751. of the Revised Code, a health maintenance organization as defined in division (I) of section 3702.51 of the Revised Code, an insurance company that issues sickness and accident insurance in conformity with Chapter 3923. of the Revised Code, a state-financed health insurance program under Chapter 3701., 4123., or 5111. of the Revised Code, or any self-insurance plan.

(EE) "To offer" means, with respect to a long-term care service, that a long-term care facility holds itself out as capable of providing, or as having the means for the provision of, a specified long-term care service. Referral to another provider of health services does not constitute offering of the health service.

(FF) "Ultimate controlling interest" means a person who holds a majority of the voting power within a corporation, business trust, firm, partnership, association, joint stock company, limited liability company, or insurance company and is:

(1) The applicant for a certificate of need; or

(2) Represented by the applicant for a certificate of need.

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Certification

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