

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 3701-12-08

Rule Type: No Change

Rule Title/Tagline: Certificate of need application and completeness process; public notice; certificate of need review; certificate of need expedited review; and decision process; appeals.

Agency Name: Department of Health

Division:

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I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 7/30/2021 and 05/23/2024
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 3702.51, 3702.57
5. **What statute(s) does the rule implement or amplify?** 3702.52, 3702.521, 3702.522, 3702.59, 3702.592, 3702.594, 3702.60
6. **What are the reasons for proposing the rule?**

The five-year review of Chapter 3701-12 was due 8/1/2020, however, due to the Ohio Department of Health's response efforts to COVID 19, extensions were granted until 1/28/2021 and 7/27/2021. Rule 3701-12-08 OAC is being filed without change.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

The rule establishes the CON application and completeness process, public notice, review, decision process, and appeal requirements for all CON applications, except those CON applications filed under section 3702.593 ORC. These requirements include the time frame an applicant has to respond to requests for additional information for an expedited review and the time the Director has to grant or deny a CON after issuing a notice of completeness.

As a result of this proposed rule, please estimate the increase/decrease in revenues or expenditures affecting the agency, or state generally, in the current biennium or future years; if the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.

8. **Does the rule incorporate material by reference? Yes**
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

Ohio Revised Code and Ohio Administrative Code exempted, as the information is readily available online.

10. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

11. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

0.00

Not Applicable.

12. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Although not associated with the revisions to this rule, the following figures remain unchanged.

For a project not involving capital expenditure:

##\$5000

For a project involving a capital expenditure:

##The greater of \$5000 or 1.5 percent of the capital expenditure proposed, with a maximum fee of \$20,000.

The new fee being implemented for expedited reviews is as follows.

\$1000 for each expedited review

The time necessary to compile and submit a CON application remains unchanged. Additional time is required to prepare the required letter expressly stating that the applicant requests an expedited review. Preparation of this letter is estimated to take no more than 15 minutes.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B).** No
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C).** No
15. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

There has been no change to the fees associated with the CON application process and required by Revised Code Section 3702.52 to administer a Certificate of Need program to ensure public access to quality long-term care services. The time, manpower, and costs associated with the certificate of need application process is deemed to be a justifiable impact as the review, approval, and monitoring of certificates of need ensures the availability of long-term care at appropriate levels across the state for Ohio's long-term care services consumers.

The CON application review process is set forth in law and mandates the review of specific aspects of the proposed project prior to the Director rendering a decision. The law also mandates a period of monitoring for CON review activity following a decision. The law requires the collection of follow-up documents relating to the project until a point in time when the applicant implements the project. Ohio law also requires an additional 5 year "monitoring" period to ensure substantial accordance with the approved project. CON reviewers are responsible for reviewing applications, making recommendations to the Director, and the collection of documents relating to that project. This post-decision collection process often occurs over a span of several years

as CON projects are generally completed over several years. The fees charged as part of the CON application process directly support the CON program, including data infrastructure and personnel.

III. Common Sense Initiative (CSI) Questions

16. Was this rule filed with the Common Sense Initiative Office? Yes

17. Does this rule have an adverse impact on business? Yes

A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes

Individuals who seek to open or renovate a nursing home are required to apply for a Certificate of Need and be approved prior to conducting any work.

B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No

C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

The rule requires submission of an application, supporting documentation and a fee of at least \$5,000 to a maximum of \$20,000 dependent on the cost of the project. An additional fee of \$1,000 is required if the applicant wants an expedited review of the application.

D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No