

3701-12-08

Certificate of need application and completeness process; public notice; certificate of need review; certificate of need expedited review; and decision process; appeals.

- (A) Except for applications for certificate of need under section 3702.593 of the Revised Code, any application to conduct a reviewable activity as defined in rule 3701-12-05 of the Administrative Code, shall be subject to this rule.
- (B) Applications for certificate of need that propose an increase in beds that is attributable to a relocation of existing beds from an existing nursing home to another existing nursing home located within a county that is contiguous to the county from which the beds are to be relocated may be submitted at any time and must meet the requirements set forth in paragraph (B) of rule 3701-12-23 of the Administrative Code.
- (C) Applications for certificate of need that propose the conversion of infirmity beds to long-term care beds may be submitted at any time and must meet the requirements set forth in division (C) of section 3702.59 of the Revised Code.
- (D) Each applicant shall submit an original of the application form and necessary attachments in a manner prescribed by the director and shall include, but not be limited to, the following:
- (1) Name of the proposed or existing long-term care facility;
 - (2) Operator of the proposed or existing long-term care facility;
 - (3) A timetable for implementing the project;
 - (4) Identification of a specific site for the project designated by a street address or, if there is no street address, a plot or parcel number;
 - (5) The bed tracking numbers of each long-term care bed that is subject to the certificate of need; ~~and~~
 - (6) A designated authorized representative who shall sign an affidavit that, to the best of his or her knowledge, the information in the application and any accompanying material is true and accurate; and
 - (7) In the case of an application for expedited review, a letter expressly stating that the applicant requests an expedited review of the certificate of need application.
- (E) The application shall be accompanied by a nonrefundable fee in the form of a check or a postal money order, payable to the treasurer state of Ohio, in the following amount:
- (1) For a project not involving a capital expenditure, five thousand dollars; or

- (2) For a project involving a capital expenditure, the greater of five thousand dollars or one point five per cent of the capital expenditure proposed, with a maximum fee of twenty thousand dollars; and
 - (3) For each application for which an expedited review is requested in accordance with paragraph (D)(7) of this rule, an additional fee of one thousand dollars.
- (F) Upon acceptance of an application and the appropriate fee, the director shall review the application for completeness of information. The director shall consider an application complete when the applicant:
- (1) Furnishes the information specified in paragraph (D) of this rule and information required on the application form;
 - (2) Pays the fee specified in paragraph (E) of this rule; and
 - (3) If required to, adequately and completely responds to the director's requests for additional information.
- (G) If an application is not accepted, the director shall not review it and shall return the fee specified in paragraph (E) of this rule, minus a one hundred dollar application processing fee.
- (H) To determine completeness, the director may request additional information from the applicant but shall not request any information that is not necessary to review the application in relation to the criteria established by this chapter, as the chapter is in effect at the time the request is made.
- (1) The director may make two requests for the additional information needed to complete an application under this paragraph.
 - (2) The applicant shall have the following timeframes ~~ninety days from the date of the letter~~ to respond to a request for additional information:
 - (a) For an application under standard review, ninety days from the date of the letter; or
 - (b) For an application for which an expedited review was requested in accordance with paragraph (D)(7) of this rule, fourteen days from the date of the letter.
 - (3) The director shall deem an application incomplete if the applicant does not timely respond to the director's request for additional information or if the director

does not receive the information necessary to complete the application within the appropriate time frame specified in this rule.

- (4) When responding to requests for additional information, applicants shall submit responses in the manner prescribed by the director.
- (I) If a revision to an application is filed in accordance with rule 3701-12-12 of the ~~Administrative~~ Administrative Code, the director may make an additional request within thirty days of receipt of the revised application for information even if two requests have already been made. The applicant shall have ninety days to respond to a request for additional information after the filing of a revised application.
- (J) The director shall determine completeness of a certificate of need application as follows:
- (1) ~~For an application under standard review: No later than thirty days after the director receives the application and the appropriate fee or thirty days after the director receives additional information submitted in response to the first request, the director shall mail to the applicant by certified mail notice of completeness or a second request for additional information.~~
- (a) No later than thirty days after the director receives the application and the appropriate fee or thirty days after the director receives additional information submitted in response to the first request, the director shall mail to the applicant by certified mail either a notice of completeness or a second request for additional information.
- (b) No later than thirty days after the director receives additional information submitted in response to the second request, the director shall mail to the applicant by certified mail a notice of completeness or deem the application incomplete.
- (2) ~~No later than thirty days after the director receives additional information submitted in response to the second request, the director shall mail to the applicant by certified mail notice of completeness or shall deem the application incomplete. For an application under expedited review:~~
- (a) No later than fourteen days after the director receives the application and the appropriate fee or fourteen days after the director receives additional information submitted in response to the first request, the director shall mail to the applicant by certified mail either a notice of completeness or a second request for additional information.
- (b) No later than fourteen days after the director receives additional information submitted in response to the second request, the director shall mail to

the applicant by certified mail notice of completeness or shall deem the application incomplete.

- (3) In the case of a revised application, if ~~if~~ a third request for additional information is made after ~~a~~ the revised application is filed, no later than thirty days after the director receives additional information submitted in response to the third request, the director shall mail to the applicant by certified mail notice of completeness or shall deem the application incomplete.
- (K) Except as necessary to comply with a subpoena issued under division (F) of section 3702.52 of the Revised Code, after a notice of completeness has been received, no person shall make revisions to information that was submitted to the director before the director mailed the notice of completeness or knowingly discuss in person, by telephone, or electronically the merits of the application with the director. A person may supplement an application after a notice of completeness has been received by submitting clarifying information to the director.
- (L) The director may deny an application for any false statement knowingly made in the application or in supplemental information submitted pursuant to this rule.
- (M) If the director deems an application incomplete as authorized by this rule, the director shall notify the applicant by certified mail, not process the application, and keep the fee specified in paragraph (E) this rule. The director's act of deeming an application incomplete and any of the other actions specified in this paragraph shall not be subject to appeal.
- (N) The director shall review applications for certificates of need which have been declared complete to determine whether a certificate should be granted.
- (O) As provided in divisions (C)(5) of section 3702.52 of the Revised Code, the director or the applicant may extend the review period once, for no longer than thirty days, by written notice within thirty days after the mailing of the notice of completeness.
- (P) After the date of mailing of a notice of completeness under paragraph (J) of this rule, ~~Except except~~ as provided in division (C)(5) of section 3702.52 of the Revised Code, the director shall grant or deny all completed applications for certificate of need no later than ~~sixty days~~ the following: ~~after the date of mailing of notice of completeness under paragraph (J) of this rule.~~
- (1) Sixty days for an application under standard review; or
 - (2) Thirty days for an application under expedited review.

- (Q) The director may grant a certificate of need for all or part of a project that is the subject of the application and may grant the certificate with conditions that must be met by the holder of the certificate.
- (R) If the director does not grant or deny the certificate of need on or before the applicable deadline specified in paragraph (P) of this rule, the certificate shall be considered granted.
- (S) The director shall mail notice of the decision on an application for a certificate of need to the applicant by certified mail and to other persons by electronic or ordinary mail upon request. The notice shall include a statement of the reasons for the decision, citations of the applicable provisions of the Revised Code and Administrative Code, and a description of the right to appeal the decision, in accordance with sections 3702.60 and 119.07 of the Revised Code.
- (T) The applicant or an affected person may appeal to the director a decision to grant or deny a certificate of need application in accordance with Chapter 119. of the Revised Code. The director shall conduct an adjudication hearing in accordance with Chapter 119. of the Revised Code.
- (1) The appellant also shall file notice with the director not later than thirty days after the date the director mailed the order; and
 - (2) The appellant or other affected person that appeals the director's decision to grant or deny a certificate of need application must prove by a preponderance of the evidence that the director's decision was not in accordance with sections 3702.52 to 3702.62 of the Revised Code or Chapter 3701-12 of the Administrative Code.
- (U) The applicant or an affected person that was party to and participated in an adjudication hearing as authorized by division (B) of section 3702.60 of the Revised Code and paragraph (T) of this rule may appeal to the tenth district court of appeals the decision issued by the director following the adjudication hearing. Each person who appeals to the tenth district court of appeals shall file with the court, not later than thirty days after the director's adjudication order is mailed; a notice of appeal that designates the order the person is appealing. The appellant also shall file notice with the director not later than thirty days after the date the director mailed the order.

Effective:

Five Year Review (FYR) Dates: 8/1/2020

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3702.52, 3702.57
Rule Amplifies: 3702.52, 3702.521, 3702.522, 3702.59, 3702.592, 3702.594, 3702.60
Prior Effective Dates: 12/21/1982 (Emer.), 03/19/1983, 07/27/1984 (Emer.), 10/28/1984, 07/01/1985, 07/01/1986, 07/23/1987 (Emer.), 10/12/1987, 10/15/1987 (Emer.), 11/30/1987, 05/16/1988, 11/28/1988, 12/22/1988 (Emer.), 02/08/1990 (Emer.), 08/03/1990, 05/20/1991, 12/28/1992 (Emer.), 03/19/1993, 05/28/1993 (Emer.), 09/06/1999, 09/27/2007, 09/01/2008, 03/25/2010, 02/25/2012, 09/02/2013, 10/23/2015