

Rule Summary and Fiscal Analysis (Part A)**Department of Health**

Agency Name

Division

Lance D. Himes

Contact

246 North High St. Columbus OH 43215-0000

Agency Mailing Address (Plus Zip)

614-466-4882

Phone

Fax

Lance.Himes@odh.ohio.gov

Email

3701-12-08

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Certificate of need application and completeness process; public notice; certificate of need review and decision process; appeals.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **Yes**

Bill Number: **HB487**General Assembly: **129**Sponsor: **Amstutz**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **3702.51, 3702.57**

5. Statute(s) the rule, as filed, amplifies or implements: **3702.52, 3702.521, 3702.522, 3702.59, 3702.592, 3702.594, 3702.60**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The passage of HB 487 required revisions to Chapter 12 of the Ohio Administrative Code to clarify the Certificate of Need (CON) program and application process.

ODH has chosen to conduct a five-year review of Chapter 3701-12 in conjunction with making necessary statutory amendments ODH is filing this new rule. ODH is filing this new rule 3701-12-08 to replace the existing rule to clarify the CON application process and to comply with LSC rule drafting requirements.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

New rule 3701-12-08 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 ORC section 3702.593. The new rule condenses, simplifies and clarifies the CON application processes and procedures previously set forth in existing rules 3701-12-08 and 3701-12-09. In order to provide clarity, the comparative review requirements specific to CON applications under section 3702.593 that were previously part of this rule, are being addressed independently in new rule 3701-12-09. A new requirement is being requested to the information required on a CON application; applicants will be required to include the "bed tracking number" associated with each bed included in a CON application. This number will be assigned by the Department of Health to each long-term care bed at the start of the application process and will be made available to all licensed providers. Bed tracking numbers will enable the Department to account for the specific location and history of long-term care beds.

In order to improve the sustainability of the fee supported CON program, fee increases are being requested as follows: (1) For a project not involving capital expenditure, from current fee of \$3000 to \$5000; and (2) for a project involving a capital expenditure, from current the greater of \$3000 or 0.9 percent of the capital expenditure proposed, with a maximum fee of \$20,000; to the greater of \$5000 or 1.5 per cent of the capital expenditure proposed, with a maximum fee of \$20,000.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule reference sections of the Ohio Revised and Administrative Codes. The O.R.C. and O.A.C. are generally available in libraries and on the internet to persons who reasonably may be expected to be affected by the rule.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide

an explanation of why filing the text or other material electronically was infeasible:

Ohio Revised Code 121.76 exempts agencies from filing copies of Ohio law and regulations cited in the text of a rule.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. 119.032 Rule Review Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase/decrease** either **revenues/ expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will increase revenues.

\$150,000.

ODH is 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 because 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. ODH has no expectation that the demand for long-term care services in Ohio will decrease; to the contrary, as the life expectancy in the United States continues to average in the late 70s, the need for long-term care services is expected to increase, and thus the need for regulation will remain.

There has not been an increase in CON application fees since 1989 when the current fees were established. The CON program is a fee supported program that has routinely operated at a loss. Following is a listing of CON revenues and expenditures by year for the past five years:

Revenue/ Expenditures by fiscal year and the number of CON applications:

2012 \$357,311 \$665,838 31

2011 \$744,001 \$855,474 54

2010 \$834,576 \$776,327 81

2009 \$552,849 \$896,167 32

2008 \$596,910 \$774,242 33

The amount of work required to provide a reviewability determination or to review a CON application is neither dependent upon nor indicative of the fee that is paid. Projects not involving capital expenditure are charged flat fee, while those involving capital expenditures are charged a minimum fee up to \$20,000 maximum, yet the CON program staff must dedicate a consistent number of hours to reviewing all applications. As a result, there are often fluctuations in the revenues available each fiscal year. In only one year out of the last five years has the CON program generated sufficient revenue to exceed its expenditures. That was in 2010 when an unusual number of applications were filed. Due to the enactment of ORC section 3702.593, which authorized the relocation of long-term care beds to underserved counties in 2010, a significant number of applications proposed the construction of new facilities which entailed, in most cases, the maximum fee of \$20,000. After 2012, that event is only authorized every four years. If the requested fee increase had been applied to the last fiscal year, 2012, the CON program could have seen an increase in revenues of approximately \$200,000. While this amount would still not have been enough to provide 100% fee support for the CON program, combined with the staff and administrative reductions that have been made to the CON program, this goal could have been achieved.

2008 \$596,910 \$774,242 33

The amount of work required to provide a reviewability determination or to review a CON application is neither dependent upon nor indicative of the fee that is paid. Projects not involving capital expenditure are charged flat fee, while those

involving capital expenditures are charged a minimum fee up to a \$20,000 maximum; yet the CON program staff must dedicate a consistent number of hours to reviewing all applications. As a result, there are often fluctuations in the revenues available each fiscal year. In only one year out of the last five years, has the CON program generated sufficient revenue to exceed its expenditures, 2010 when an unusual number of applications were filed. Due to the enactment of ORC section 3702.593, which authorized the relocation of long-term care beds to underserved counties, in 2010 a significant number of applications proposed the construction of new facilities which entailed, in most cases, the maximum fee of \$20,000. After 2012, that event is only authorized every four years. If the requested fee increase had been applied to the last fiscal year, 2012, the CON program could have seen an increase in revenues of approximately \$200,000. While this amount would still not have been enough to provide 100% fee support for the CON program, combined with the staff and administrative reductions that have been made to the CON program, this goal could have been achieved.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

For a project not involving capital expenditure, from current fee of \$3000 to \$5000; and

For a project involving a capital expenditure, from current the greater of \$3000 or 0.9 percent of the capital expenditure proposed, with a maximum fee of \$20,000; to the greater of \$5000 or 1.5 per cent of the capital expenditure proposed, with a maximum fee of \$20,000.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to

R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

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

All rules in Chapter 3701-12 are part of the Certificate of Need Application (CON) process. Any person seeking to engage in reviewable activities involving long-term care facilities or long-term care beds must obtain this written approval granted by the Director of Health.

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? **Yes**

For persons who engage in reviewable activities without obtaining a CON, the Director may impose civil monetary penalties of \$3000 up to \$250,000 depending on the type of violation; revoke or refuse to issue a license; or reduce the bed capacity of a facility for violations of CON requirements.

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

The rule requires an application with supporting documentation and an application fee.