

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 3701-12-08

**Rule Type:** Amendment

**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?** No
  - A. **What is the rule's five year review date?** 8/1/2020
2. **Is this rule the result of recent legislation?** Yes
  - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 166 - 133  
- Rep. Oelslager
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 3702.52, 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 rule is being amended to incorporate changes specific to the Certificate of Need program that were included in revisions to Chapter 3702. of the Ohio Revised Code as part of the budget bill, HB 166.

- 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. The rule has been revised to incorporate statutory changes to Chapter 3702. ORC that were included in HB 166. These revisions include removing bed tracking numbers from the information that must be included with a CON application. The time frame an applicant has to respond to requests for additional information for an expedited review has been reduced from 90 to 30 days and increases the time the Director has to grant or deny a CON after issuing a notice of completeness for the application, from 30 to 45 days. Finally, the term "affected person" has been removed throughout the rule as a party that may request an appeal of a Director's decision.

- 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 decrease expenditures.

3000 to 4500

The statutory revisions incorporated into the rule have the potential to result in fewer appeals. The revisions limit appeals to the applicant. Based on the history of appeals in the CON program related to this rule's requirements, this may result in the reduction of hearing by one. The cost of hearings averages between \$3000 and \$4500.

**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 as a result of the proposed revisions to this rule. 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 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**

### **IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))**

**18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No**

**A. How many new regulatory restrictions do you propose adding?**

Not Applicable

**B. How many existing regulatory restrictions do you propose removing?**

Not Applicable