

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 3701-12-09

**Rule Type:** Amendment

**Rule Title/Tagline:** Certificate of need application and completeness process for applications filed under section 3702.593 of the Revised Code; comparative review; review and decision process; public notice; 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? 1/28/2021
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  
- Representative 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, 3702.57 , 3702.593, 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 CON applications, filed under ORC section 3702.593. The rule has been revised to establish the new review period for CON applications filed under section 3702.593. ORC as January 1, 2020 to December 31, 2023. Furthermore, new timelines for the submission of applications under comparative review have been incorporated throughout the rule and bed tracking numbers have been removed from the information that must be included with a CON application. Finally, the rule has been revised to require the Director to grant or deny a completed application for a CON no later than 60 days after the mailing of the notice of completeness or no later than November 30th in the year the application was received for applications under comparative review.

**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 Administrative Code, Ohio Revised Code, Title XVIII of the Social Security Act, 49 Stat. 286 (1965), 42 U.S.C. 1395, as amended (1981); Title XIX of the Social Security Act, 49 Stat. 286 (1965), 42 U.S.C. 1396, as amended (1981) exempted; all information is readily available via the internet.

**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.

\$7000

The statutory requirements incorporated into this rule eliminate the requirement of a second review phase resulting in a potential decrease in expenditures of

approximately \$7000. The reduction in expenditures is based upon a history of one second phase review during past review periods. The costs are associated with the time and manpower necessary to complete a review, typically the CON supervisor for a period of one week to complete the review.

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

There are no changes to the fees in the rule as a result of the proposed revisions. The costs of compliance with the rule remain unchanged from the previous version and include the time necessary to prepare the CON application and the following fees:

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.

**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.**

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**

A Certificate of Need is required for the construction of a new long-term care facility or the movement of long-term care beds.

**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.

**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