

3701-12-09

**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.**

- (A) Applications for certificate of need filed under section 3702.593 of the Revised Code to conduct a reviewable activity as defined by rule 3701-12-05 of the Administrative Code shall be subject to this rule.
- (B) At the times specified in this rule, the director shall accept certificate of need applications for any of the following purposes if the proposed increase in beds is attributable solely to relocation of existing beds from an existing long-term care facility in a county with excess beds to a long-term care facility in a county in which there are fewer long-term care beds than the county's bed need:
- (1) Approval of beds in a new long-term care facility or an increase of beds in an existing long-term care facility if the beds are proposed to be licensed as nursing home beds under Chapter 3721. of the Revised Code;
  - (2) Approval of beds in a new county home or new county nursing home, or an increase of beds in an existing county home or existing county nursing home if the beds are proposed to be certified as skilled nursing facility beds under the medicare program, Title XVIII of the Social Security Act, 49 Stat. 286 (1965), 42 U.S.C. 1395, as amended (1981), or nursing facility beds under the medicaid program, Title XIX of the Social Security Act, 49 Stat. 286 (1965), 42 U.S.C. 1396, as amended (1981); or
  - (3) An increase of hospital beds registered pursuant to section 3701.07 of the Revised Code as long-term care beds.
- (C) The review period for each review process shall be every four years beginning July 1, 2012.
- (1) A four year review process shall consist of two phases:
    - (a) The first phase of a four year review process shall begin July first of the first year.
    - (b) The second phase of a four year review process shall begin July first of the third year.
  - (2) Applications for certificates of need made under the first review process that propose an increase in beds that is attributable solely to relocation of existing beds from an existing long-term care facility in a county with excess beds to

a long-term care facility in a county in which there are fewer long-term care beds than the county's bed need, as published on the department of health's web site, shall be submitted from July 1, 2012 through July 31, 2012 and every four years thereafter.

- (3) If a remaining bed need is published on the department of health's web site for a county, applications for certificates of need made under the second phase of a four year comparative review process that propose the re-distribution of beds made available pursuant to paragraph (O)(3) of rule 3701-12-23 of the Administrative Code, shall be submitted from July 1, 2016 through July 31, 2016 and every four years thereafter.
- (D) Applications made under section 3702.593 of the Revised Code are subject to comparative review if two or more applications are submitted during the same review period and any of the following apply:
- (1) The applications propose to relocate beds from the same county and the number of beds for which certificates of need are being requested for relocation totals more than the number of beds available in the county from which the beds are to be relocated;
  - (2) The applications propose to relocate beds to the same county and the number of beds for which certificates of need are being requested for relocation totals more than the number of beds needed in the county to which the beds are to be relocated;
  - (3) The applications propose to relocate beds from the same service area and the number of beds left in the service area from which the beds are being relocated would be less than the state bed need rate determined under in paragraph (D) of rule 3701-12-23 of the Administrative Code.
- (E) To be considered timely, the director must receive an application made under a review process from July first through July thirty-first in the first year and third years of a four year comparative process that includes the information that complies with paragraph (F) of this rule and is accompanied by the appropriate fee prescribed in paragraph (G) of this rule. If an application made under a comparative review process is not timely received, the director shall not review it and shall return the fee specified in paragraph (G) of this rule, minus a one hundred dollar application processing fee.
- (F) 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 proposed or existing long-term care facility;
  - (2) Name of operator of 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.
- (G) 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.
- (H) 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 (F) of this rule and the information required on the application form;
  - (2) Pays the fee specified in paragraph (G) of this rule; and
  - (3) If required to, adequately and completely responds to the director's requests for additional information.
- (I) 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 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.
- (3) When responding to requests for additional information, applicants shall submit responses in the manner prescribed by the director.
- (4) For applications under comparative review, the following deadlines apply:
  - (a) No later than August thirty-first of the same year in which the application is received, the director shall mail to the applicant by certified mail notice that additional information is not necessary or a first request for additional information.
  - (b) No later than October thirty-first of the same year in which the application is received, the applicant shall respond to the first request for additional information.
  - (c) If a first request for additional information is mailed, no later than November thirtieth of the same year in which the application is received, the director shall mail to the applicant by certified mail notice that additional information is not necessary, a second request for additional information, or deem the application incomplete.
  - (d) No later than January thirty-first of the year following the year in which the application is received, the applicant shall respond to the second request for additional information.
  - (e) No later than the last day of February of the year following the year in which the application is received, the director shall mail to the applicant by certified mail, notice of completeness or shall deem the application incomplete.

If the dates specified in this paragraph are a weekend or a day when state offices are closed, the deadline shall be moved to the next business day.
- (J) 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.
- (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 (G) 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) The director may extend the review period once, for no longer than thirty days, by written notice within thirty days after the mailing of the final notice of completeness mailed under paragraph (I) of this rule. An extension by the director shall apply to all applications in a comparative review process. No applicant in a comparative review process may extend the review period.
- (P) 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:
  - (1) No later than sixty days after the date of mailing of notice of completeness under paragraph (I) of rule this rule; or
  - (2) No later than April thirtieth, or the next business day if April thirtieth is a weekend, of the year following the year in which the application is received for applications under a comparative review process and a notice of completeness was mailed under paragraph (I) of this rule.
- (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 to the director 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

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Certification

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Date

Promulgated Under: 119.03  
Statutory Authority: 3702.52, 3702.57  
Rule Amplifies: 3702.52, 3702.57, 3702.593, 3702.60  
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05/16/1988, 11/28/1988, 12/22/1988 (Emer.),  
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12/29/1992 (Emer.), 03/19/1993, 05/28/1993 (Emer.),  
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02/25/2012, 09/02/2013, 10/23/2015