

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

Agency Name

Division

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3701-12-09

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

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.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
2. Are you proposing this rule as a result of recent legislation? **No**
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: **3702.52, 3702.57**
5. Statute(s) the rule, as filed, amplifies or implements: **3702.52, 3702.57, 3702.593, 3702.60**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The five year review of Chapter 3701-12 is due September 1, 2018. Due to the number of rules impacted by the statutory changes required in HB 483, ODH decided to conduct an early five-year review of Chapter 3701-12 in conjunction with making all necessary statutory amendments.

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:

O.A.C. rule 3701-12-09 establishes the CON application and completeness process, public notice, review, decision process, and appeal requirements for CON applications, filed under O.R.C. section 3702.593. Revisions have been made to remove the public notice publication requirements of paragraph (M) and the Director's consideration of failure to publish this notice in paragraph (N) due to changes in industry standards and technology. Publication in newspaper media is no longer a primary means of providing notice to the public; the public is more likely to rely on alternative media sources, such as the internet, to obtain information or notice. The publication requirement is not statutory and the revision will result in a cost savings to applicant.

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 references 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 can 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:

The cited rules and regulations are exempt from inclusion in this filing pursuant to R.C. 121.76.

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:

8/5/2015: Only after filing did we notice that a date was incorrect in paragraph (C)(3). Changed date from 2014 to 2016.

12. Five Year Review (FYR) Date: **8/4/2015**

(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 have no impact on revenues or expenditures.

\$0.00

Not applicable

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: \$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 time necessary to prepare, submit, and provide any necessary follow-up information to the Certificate of Need Program is dependent upon the size and

complexity of the project. Ample time is provided for an applicant to thoroughly explore the financial and operational feasibility of a proposed project.

The removal of the requirement for applicants to publish in a newspaper a notice of their application for a CON represents a decrease in costs to the applicant.

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?

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? **No**

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.