

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 3701-12-18

**Rule Type:** No Change

**Rule Title/Tagline:** Validity requirements, follow-up and withdrawal of certificates of need.

**Agency Name:** Department of Health

**Division:**

**Address:** 246 North High St Columbus OH 43215

**Contact:** Alicyn Carrel **Phone:** 614-752-8451

**Email:** alicyn.carrel@odh.ohio.gov

#### I. Rule Summary

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 3/26/2021 and 05/23/2024
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 3702.52; 3702.54; 3702.525; 3702.57
5. **What statute(s) does the rule implement or amplify?** 3702.60; 3702.51; 3702.52; 3702.521; 3702.522; 3702.523; 3702.524; 3702.525; 3702.526; 3702.53; 3702.531; 3702.54, 3702.55; 3702.56; 3702.57; 3702.59; 3702.591; 3702.592; 3702.593; 3702.594
6. **What are the reasons for proposing the rule?**

The five-year review of Chapter 3701-12 was due 8/1/2020, however, due to the Ohio Department of Health's response efforts to COVID 19, extensions were granted until 1/28/2021 and 7/27/2021. Rule 3701-12-18 OAC is being filed without change.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule establishes the validity, follow-up, and withdrawal requirements for CONs including, but not limited to, civil monetary penalties imposed for a CON exceeding the maximum capital expenditure of 110%. A civil monetary penalty may be imposed upon a holder if the more than 110% of the maximum capital expenditure stated in the certificate is expended. The penalty imposed is equal to the amount of the application fee paid for the approved certificate of need plus an amount equal to the expenditure overrun above 110% of the maximum capital expenditure stated in the certificate multiplied by 0.015.

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 exempted

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 have no impact on revenues or expenditures.

0.00

Not Applicable.

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

Section 3702.54 of the Ohio Revised Code grants the Director of Health the authority to impose a civil money fine for carrying out a reviewable activity without receiving Certificate of Need approval and may refuse to accept for review any application for subsequent reviewable activities for one to three years. Fines are detailed as:

An amount equal to the greatest of the following:

# Three thousand dollars;

# Five per cent of the operating cost of the activity that constitutes the violation during the period of time it was conducted in violation of section 3702.53 of the Revised Code;  
# If a certificate of need was granted, two per cent of the total approved capital cost associated with implementation of the activity for which the certificate of need was granted.

# Not to exceed two hundred fifty thousand dollars.

# Not expend more than one hundred ten per cent of the maximum capital expenditure stated in the certificate.

A civil monetary penalty may be imposed upon a holder if the more than 110% of the maximum capital expenditure stated in the certificate is expended. The penalty imposed is equal to the amount of the application fee paid for the approved certificate of need plus an amount equal to the expenditure overrun above 110% of the maximum capital expenditure stated in the certificate multiplied by 0.015.

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.**

Funds collected support personnel and infrastructure necessary to support this statutorily required program.

### **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**

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**

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 the submission of documents to comply with project monitoring requirements.

- 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**