

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

Agency Name

Division

Lance D. Himes

Contact

246 North High St. Columbus OH 43215-0000

Agency Mailing Address (Plus Zip)

614-466-4882

Phone

Fax

Lance.Himes@odh.ohio.gov

Email

3701-12-18

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Validity requirements, follow-up and withdrawal of certificates of need.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

2. Are you proposing this rule as a result of recent legislation? **Yes**

Bill Number: **HB487**General Assembly: **129**Sponsor: **Amstutz**

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: **3702.511, 3702.53**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The passage of HB 487 required revisions to Chapter 12 of the Ohio Administrative Code to clarify the Certificate of Need (CON) program and application process. ODH has chosen to conduct a five-year review of Chapter 3701-12 in conjunction with making necessary statutory amendments. ODH requests amendment of rule 3701-12-18.

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:

This rule establishes the validity, follow-up, and withdrawal requirements for CONs. The requested amendments are being made to provide clarification of the definitions of "commence construction" and "to obligate" as they pertain to CON projects and to correspond to information provided in CON application materials. The amplified requirements contained in this rule are consistent with program requirements that have been in place for a number of years that are designed to expedite the development of a CON project once the application has been approved and a need for the activity has been established in the review process. Additional amendments are being made to revise language pertaining to subpoenas to correspond to changes in statutory language and to include licensure, certification, or registration of long-term care beds as acceptable documentation to prove obligation of funds for a CON project.

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 Code. The O.R.C. is 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:

Ohio Revised Code 121.76 exempts agencies from filing copies of Ohio law and regulations cited in the text of a rule.

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:

Not Applicable.

12. 119.032 Rule Review Date: **6/18/2013**

(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:

No new costs. This specific rule does not result in any increase in the existing costs or the time associated with the preparation and submission of documents to comply with project monitoring requirements. The time necessary to prepare and submit documentation is dependent on the size and complexity of the project.

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? **Yes**

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? **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.