

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

Agency Name

Division

Kaye Norton

Contact

246 North High Street Columbus OH 43215-0000

Agency Mailing Address (Plus Zip)

614-644-8184

Phone

Fax

Kaye.Norton@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 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, 3702.524, 3702.57, 3702.57**5. Statute(s) the rule, as filed, amplifies or implements: **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, 3702.594, 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 3701-12-18 establishes the validity, follow-up, and withdrawal requirements for CONs. Revisions have been made to incorporate current program practices pertaining to civil monetary penalties imposed for a CON exceeding the maximum capital expenditure cap 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. The revisions require notification to the holder of the CON of their hearing right under Chapter 119. of the Revised Code, and their option to pay the invoiced penalty in lieu of a hearing.

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:

Cited sections of the Ohio Revised Code 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:

Not Applicable.

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:

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.

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.