

3701-12-18

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

(A) For the purposes of this rule, "holder" means the applicant to whom a certificate of need was granted. In addition to compliance with validity requirements established by any other rule of this chapter, to maintain the validity of a certificate of need, the holder shall:

(1) Obligate the capital expenditure, within the meaning of paragraph (A)(1)(a) of this rule, within twenty-four months after the date of mailing of the notice that the certificate was granted or, if the grant or denial of the certificate is appealed under section 3702.60 of the Revised Code, within twenty-four months after the issuance of an order granting the certificate, which order is not subject to further appeal.

(a) For the purpose of this rule, "to obligate" means:

- (i) For a project that primarily involves construction and is to be financed through external borrowing of funds, to secure financial commitment for the stated purpose of developing the project and commence construction that continues uninterrupted except for interruptions or delays that are unavoidable due to reason's beyond the person's control, including labor strikes, natural disasters, material shortages, or comparable events.
- (ii) For a project that primarily involves construction and is to be financed internally, to receive formal approval from the holder's board of directors or trustees, or other governing authority to commit specified funds for the implementation of the project and commence construction that continues uninterrupted except for unavoidable interruptions or delay due to reason's beyond the person's control, including labor strikes, natural disasters, material shortages, or comparable events
- (iii) For a project that involves no capital expenditure or only minor renovations to existing structures, to provide the long-term care service by the means specified in the approved application for the certificate.
- (iv) For a project that primarily involves leasing a building or space that requires only minor renovations to the existing space, to execute a lease and provide the long-term care service by the means specified in the approved application for the certificate.

- (v) For a project that primarily involves leasing a building or space that has not been constructed or requires substantial renovations to existing space, to commence construction for the purpose of implementing the reviewable activity that continues uninterrupted except for interruptions or delays that are unavoidable due to reasons beyond the person's control, including labor strikes, natural disasters, material shortages, or comparable events.
- (b) For the purposes of this rule, "commence construction" means:
- (i) For a project involving construction, the placement of any structural foundation element that becomes an integral part of the structure. A structural foundation element includes, but is not limited to, footings, piers, grade beams and infrastructure items such as pilings and caissons. The acts of surveying, staking, soil testing, demolition of existing structures, delivery of materials, establishment or connection of utility services, elimination or removal of a safety or sanitary hazard from the site and site preparation, including site grading, site filling or clearing, are not considered commencement of construction.
  - (ii) For projects involving exclusively renovations to an existing structure, the modification or removal of an integral part of the structure or portion thereof. Such modification or removal includes, but is not limited to, the modification or removal of walls and ceilings, large surface replastering, major plumbing projects, and window replacement. Minor repair and maintenance activities that minimally disrupt building components, such as minor electrical or plumbing activities, are not considered commencement of construction.
- (c) For the purpose of this rule, "provide the long-term care service" means, in the case of a project that affects the number of long-term care beds at an existing long-term care facility, to obtain a license or certification specifying the appropriate bed capacity.
- (d) The twenty-four month period specified in paragraph (A)(1) of this rule shall not be extended by any means, including the granting of a subsequent or replacement certificate of need.
- (2) After obligating, maintain reasonable progress towards completion of the project. Reasonable progress includes, but is not limited to:

- (a) When the holder maintains uninterrupted progress except for delays that are unavoidable due to reasons beyond the holder's control; or
  - (b) When the holder provides reasonable assurance that it will provide the long-term care service specified in the approved application for the certificate by the projected completion date approved by the director.
- (3) Submit all documents required by paragraph (B) of this rule for monitoring implementation of the reviewable activity in a timely manner.
- (4) Not transfer the certificate, within the meaning of section 3702.523 of the Revised Code.
- (5) Conduct the reviewable activity in substantial accordance with the approved application. A reviewable activity shall not be determined to be not in substantial accordance with the certificate of need solely because of either of the following:
  - (a) A decrease in bed capacity; or
  - (b) A change in the owner or operator of the facility unless any of the circumstances specified in division (B) of section 3702.59 of the Revised Code apply to the new owner or operator.
- (6) Conduct the reviewable activity at the site specified in the approved application.
- (7) Not expend more than one hundred ten per cent of the maximum capital expenditure stated in the certificate.
  - (a) A civil monetary penalty may be imposed upon a holder if the more than one hundred ten per cent of the maximum capital expenditure stated in the certificate is expended.
  - (b) The penalty imposed shall equal the amount of the application fee paid for the approved certificate of need plus an amount equal to the expenditure overrun above one hundred and ten percent of the maximum capital expenditure stated in the certificate multiplied by 0.015.
  - (c) The director shall notify the holder of the certificate of need of the penalty proposed under this paragraph by certified mail.
  - (d) The holder of the certificate of need may appeal to the director in writing within thirty days of the date the director mailed the notice of the penalty in accordance with Chapter 119. of the Revised Code.

- (e) The holder of the certificate of need may choose to pay the penalty proposed under this paragraph within thirty days of the date the director mailed the notice in lieu of an appeal.
- (B) The director shall monitor project implementation activities by holders of certificates of need. The director's monitoring shall include but shall not be limited to review of documentation submitted by holders. Each holder shall submit the following:
- (1) Progress reports, on forms provided by the director, not less than six months after obligating the project and every six months thereafter until the project is complete. The holder shall submit progress reports more frequently if requested by the director;
  - (2) An affidavit of substantial completion of the project, on a form provided by the director, upon project completion;
  - (3) Architectural drawings or design development drawings, when appropriate to the nature of the activity and when requested by the director;
  - (4) Written documentation of obligating the project, which shall be submitted to the director not later than the earlier of thirty days after obligating or five days after the twenty-four month period expires. Documentation of obligation may include, but shall not be limited to, design drawings, a statement by the general contractor attesting to the date construction commenced, a building permit issued by the building authority having jurisdiction, approval to commit the specified funds for implementation of the approved project from a board of directors or trustees or other governing authority, construction contracts, purchase or lease contracts for the building, zoning approvals, evidence of site acquisition, or secured financial agreements, licensure, certification, or registration of the long-term care beds;
  - (5) Timely notification of any delay and request for approval of any changes to the projected completion date; and
  - (6) Any other documents relevant to project implementation, upon request by the director.
- (C) The director may issue and enforce, in the manner provided in section 119.09 of the Revised Code, subpoenas and subpoenas duces tecum to compel a person to testify and produce documents relevant to the director's monitoring of the approved project. The director or the director's representative may visit sites where the activities are or will be conducted.

- (D) The director shall send a notice to the holder of the certificate that states whether or not the holder has obligated the approved project. The director shall send the notice by certified mail to the holder not later than fifteen days after the director receives the obligation documentation or fifteen days after the twenty-four month period expires, whichever is later.
- (E) If a holder fails to obligate the approved project, the certificate of need expires regardless of whether the director has sent notice pursuant to paragraph (D) of this rule or not. No further action is required by the director. Expiration of a certificate of need does not constitute a withdrawal and the procedure provided in paragraph (F) of this rule for a withdrawal does not apply. A determination by the director that a certificate of need has expired is final and not appealable under Chapter 119. of the Revised Code.
- (F) The director may withdraw a certificate of need for failure to comply with the requirements for maintaining the validity of the certificate established by this rule or any other rule of this chapter or because the application or supplemental information contained material, false or misleading statements or knowing omissions of material information. In withdrawing a certificate, the director shall use the following procedures:
- (1) At least thirty days before withdrawing the certificate, the director shall notify the holder of the proposed withdrawal by certified mail. The notice shall include the reasons for the proposed action and a statement that the holder may respond to the proposal in writing within thirty days after the mailing of the notice of the proposed withdrawal.
  - (2) Before withdrawing the certificate, the director shall consider any information timely filed by the holder and may consider any other information that the director considers appropriate.
  - (3) The director shall notify the holder of the withdrawal of the certificate or the decision not to withdraw the certificate by certified mail within ninety days after the mailing of the notice of the proposed withdrawal. The notice of withdrawal shall specify the reasons for the withdrawal, citations of relevant provisions of the Revised Code and the Administrative Code and a description of the right to appeal the withdrawal, in accordance with Chapter 119. and section 3702.60 of the Revised Code.

Effective:

Five Year Review (FYR) Dates: 8/9/2021

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Certification

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Date

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