3701-12-19 **Monitoring of activities for which nonreviewability rulings have been issued and for certain approved projects.**

(A) The director shall monitor the implementation of an activity ~~that~~ for which the director has ~~determined~~issued, under rule 3701-12-04 of the Administrative Code, ~~is not~~ a nonreviewability determination~~reviewable activity~~ if the director determines that the activity requires monitoring under paragraph (B) of this rule. The director shall monitor the activity to determine whether it is implemented in the manner described in the request for the ruling and whether it still is not ~~reviewable~~a reviewable activity.

(B) The director may determine that an activity requires monitoring under this rule at the time that the ~~ruling of~~ nonreviewability determination is issued or at any subsequent time. The director shall commence monitoring when the director determines that one or more of the factors specified in this paragraph are applicable. The director may consider the following factors in determining which activities require monitoring under this rule:

(1) Whether the ~~ruling of~~ nonreviewability determination was based upon representations that certain services would or would not be provided as a result of the activity;

(2) Whether the ~~ruling of~~ nonreviewability determination was based upon representations that the activity would be conducted through a particular organizational structure or by a certain type of facility such as a physician's office;

(3) Whether the ~~ruling of~~ nonreviewability determination was based upon certain configurations, types, or uses of physical space or the request lacked specificity concerning the configuration, type, or use of physical space;

(4) Whether the activity involved exclusion of items listed in division ~~(T)~~ (S) of section 3702.51 of the Revised Code from a construction or renovation project that otherwise would have been reviewable;

~~(5) Whether the activity involved acquisition of medical equipment that would be reviewable if it is not used to conduct research required by the United States food and drug administration (FDA) or clinical trials sponsored by the "National Institutes of Health" or any new or experimental medical technology that is designated by the public health council;~~

~~(6)~~(5) The director has reason to believe that the activity is being implemented differently from the representations made in the request for the reviewability ruling or in a manner that may make the activity a reviewable activity;

~~(7)~~(6) Whether the activity is a reviewable activity if a determination of adverse affect on access to health care has been made; or

~~(8)~~(7) Whether the activity is a reviewable activity if any of the conditions specified under division ~~(T)~~(S) of section 3702.51 of the Revised Code were not been met.

(C) Upon determining that an activity requires monitoring under this rule, the director shall provide written notice of that determination to the person who received the reviewability ruling. The notice shall specify the provisions of paragraph (B) of this rule that form the basis for the determination that monitoring is required. In the case of monitoring on the basis of paragraph (B)~~(6)~~(5) of this rule, the notice shall specify the reason why the director believes that paragraph applies.

(D) For purposes of conducting monitoring under this rule, the director may request compliance with the provisions of this paragraph that are relevant to the basis for monitoring a particular activity, as specified in the notice provided under paragraph (C) of this rule. Upon request by the director, a person who has received a ruling of nonreviewability for an activity that the director determines requires monitoring under this rule shall do all of the following, as applicable, beginning no later than forty-five days after the director's request:

(1) Provide progress reports on the implementation of the activity, at the times and containing the information requested by the director;

(2) In the case of an activity monitored under paragraph (B)(4) of this rule, provide accurate statements of costs involved in implementation or operation of the activity and supporting documentation;

(3) In the case of an activity monitored under paragraph (B)(3) (B)(4), or (B)~~(6)~~(5) of this rule, provide contracts, drawings, descriptions, or other information relating to construction or renovation work associated with the activity;

(4) In the case of an activity monitored under paragraph (B)(1) or (B)(2) of this rule, provide information about the services to be furnished as a result of the activity, including the identity and type of the providers of the services and data on the utilization of the services;

~~(5) In the case of an activity monitored under paragraph (B)(5) of this rule, provide information about the current use and FDA approval status of medical equipment acquired under the ruling of nonreviewability or information about the disposition of equipment replaced as the result of the activity;~~

~~(6)~~(5) In the case of an activity monitored under paragraph (B)(2) of this rule, provide information about the organizational relationships of persons involved in implementing and operating the activity;

~~(7)~~(6) Allow the director to have access to the site or sites at which the activity is implemented or operated and to examine records pertinent to implementation or operation of the activity, subject to applicable confidentiality laws. The director shall examine only those portions of the site or those records that are relevant to the basis for the determination that monitoring is required, as specified in the notice provided under paragraph (C) of this rule;

~~(8)~~(7) Provide any other information that is relevant to monitoring whether the activity is being conducted in a manner consistent with the representations in the request for the ruling and that does not render it reviewable; and

~~(9)~~(8) Provide documentation to verify compliance with the conditions specified under division ~~(T)~~(S) of section 3701.51 of the Revised Code, if the activity is monitored under paragraph (B)~~(8)~~(7) of this rule.

(E) The director shall monitor an activity under this rule only for the period of time necessary to determine that the activity has been implemented in accordance with the request for the reviewability ruling and in a manner that does not make it a reviewable activity. For other activities, such as activities monitored under paragraph (B)(1) ~~or (B)(5)~~ of this rule, monitoring may be continuing.

(F) Upon request by the director, the person to whom a ~~ruling of~~ nonreviewability determination was issued shall provide affidavits from appropriate individuals attesting to the accuracy of any information provided under this rule.

(G) In order to assist the director in monitoring any approved projects, each hospital for which a certificate of need for skilled nursing beds was granted shall report the information prescribed by this paragraph on a form prescribed by the director. The hospital shall submit the form no later than the last day of January, April, July and October of each year. The form shall cover the calendar quarter most recently ended. The information submitted in the form shall include, but not be limited to:

(1) On an aggregate basis, by diagnosis-related group prescribed under the program for health insurance for the aged and disabled established by Title XVIII of the Social Security Act (1981), 42 U.S.C. 301, as amended (the medicare program), the number of patients admitted to the skilled nursing beds, the number of hours of care provided by technical and professional personnel and the number of procedures requiring technical or professional personnel that

were provided;

(2) The average length of stay in the skilled nursing beds;

(3) The number of patients whose length of stay in the skilled nursing beds exceeded thirty days and the reasons why each such patient's length of stay exceeded thirty days.

After reviewing the aggregate information submitted under this paragraph, the director may request additional, patient-specific information from the hospital to verify compliance with this rule and with the approved application for the certificate of need.

(H) For the purposes of this rule, "skilled nursing bed" means a bed that was approved under former rule 3701-12-233 of the Administrative Code, effective May 20, 1991, and that is in the portion of the hospital that participates in the program for health insurance for the aged and disabled established by Title XVIII of the Social Security Act (1981), 42 U.S.C. 301, as amended (the medicare program).

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