

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

Agency Name

Division

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3701-12-23

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Long-term care facilities and beds.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

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

Bill Number: **HBAm. Sub. 1** General Assembly: **128**

Sponsor: **Rep. Sykes**

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: **3702.51, 3702.522, 3702.57**

5. Statute(s) the rule, as filed, amplifies or implements: **3702.51, 3701.52, 3702.525, 3702.532, 3702.54, 3702.58, 3702.59, 3702.591, 3702.61**

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

As a result of recent changes to the Certificate of Need (CON) statutes and with approval of the Public Health Council, the Ohio Department of Health is seeking the rescission of previous rule 3701-12-23 and replacement with new rule 3701-12-23.

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 sets forth the criteria for the Director of Health's review of certificate of need applications for existing or proposed long-term care facilities. The Public Health Council has approved amending the rule to achieve consistency with recent statutory revisions and establish the state bed need calculation rate; the parameters for determining bed need within a county; and bed excess within a county. Also, changes set forth the criterion for establishing preference for applications within the comparative review process; and guidelines for applications made during first and second phases of the four year comparative review process.

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 response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

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:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

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:

Subsequent to the 11/19/2009 Public Health Council meeting, ODH identified areas of concern with the language in rule 3701-12-23 and drafted additional amendments. These amendments clarify the criteria pertaining to the comparative review process; clarify the surrendered bed calculation requirements; and ensure

consistency throughout the rule with the current statutory language in Ohio Revised Code Chapter 3702. On 1/14/2010, the Public Health Council voted to revise file this rule with the changes.

2/3/2010 - Revise filed the rule to replace amplying citation 3702.63 with 3702.591 in the ending material following the rule.

12. 119.032 Rule Review Date:

(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 increase revenues.

\$3,242,815.

The removal of the previous moratorium on beds and the new statutory provisions allowing for the movement of beds in contiguous counties with a 90% bed rate is expected to result in an increase in applications at the following rates:

2009/2010: Projected 300% increase in applications from continuous counties resulting in 90 applications.

2010/2011: Projected decrease in contiguous county applications, but continuing an overall increase in bed need relocations at an additional 33% increase from 2009/2010 resulting in 120 applications.

There are currently four FTE staff dedicated to CON review, three of which are 100% dedicated and one staff at 80%. In addition there is one support staff assigned to the program at 90%. The increase in applications would necessitate an increase by two FTE dedicated staff at cost of \$87,026 per FTE annually, resulting in a biennial cost of \$348,104 to the department; however, due to the time frame in which these rules may become effective (April 2010), the program is projecting

potential expenditures of \$217,565.

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:

There are no new costs.

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**