

**AGENCY MEMORANDUM OF RESPONSE**

**TO:** Danielle Dillard, Regulatory Policy Advocate

**CC:** Carrie Kuruc  
Director of the Common Sense Initiative Office Ohio  
Lieutenant Governor

**FROM:** Lisa Eschbacher  
Senior Legal Counsel  
Ohio Department of Health

**RE:** Certificate of Need (OAC Chapter 3701-12-04, 08, 09, 11, and 18)

**DATE:** February 6, 2019

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Thank you for permission to go forward with Original Filing O.A.C. Chapter rules 3701-12-04, -08, -09, -11, and -18 with JCARR. This package consists of five amended rules. The package was submitted to the CSI Office on December 11, 2018, and the comment period ended on January 11, 2019. No comments were received during that time. Along with CSI's recommendation to proceed with the filing, the Ohio Public Health Advisory Board (OPHAB) voted on January 25, 2019 to recommend the Director's approval of the rules. These rules establish reviewability, application, approval and monitoring requirements for the Certificate of Need Program.



## **MEMORANDUM**

**TO:** Alicyn Carrel, Ohio Department of Health

**FROM:** Danielle Dillard, Regulatory Policy Advocate

**DATE:** January 31, 2019

**RE:** CSI Review – Certificate of Need (OAC 3701-12-04, 3701-12-08, 3701-12-09, 3701-12-11, and 3701-12-18)

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On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

### **Analysis**

This rule package consists of five amended rules, submitted by the Ohio Department of Health (Department). The rule package was submitted to the CSI Office on December 11, 2018, and the comment period remained open until January 11, 2019. No comments were received during that time.

The rules establish the reviewability, application, approval, and monitoring requirements for the Certificate of Need program. The Certificate of Need program ensures the public access to quality long-term care services by requiring review and approval of activities involving the location and utilization of long-term care beds and services. The rules are being amended to incorporate new statutory language requiring the implementation of an expedited process for reviewability determinations and program applications. The revisions set the requirements for both applicants and the Department.

As part of early stakeholder outreach, the Department sent the draft rules to nine stakeholders identified as the relevant interested parties. Only minor changes were made, and a requirement regarding expedited review was added to the rules. Applicants must now make an express

statement that an expedited reviewability determination is being requested. No comments were received during the CSI public comment period.

The rules impact all individuals and organizations in Ohio pursuing activities involving the development, replacement, or renovation of a long-term care facility; an increase or relocation of long-term care beds; or any other action involving the Certificate of Need program. The application fee for the Certificate of Need program is \$5,000 for projects not involving capital expenditure. For projects involving capital expenditures the fee is the greater of \$5,000 or 1.5% of the capital expenditure proposed, with a maximum fee of \$20,000. Expedited reviews cost an additional \$1,000. The rules also impose administrative costs related to the time necessary to comply with the rules. Applicants must take time to prepare, submit, and provide any necessary follow-up information to the Certificate of Need program. These administrative costs will vary based on the size and complexity of the project.

The Department justifies any adverse impact by noting that it is required to administer a Certificate of Need program to ensure public access to quality long-term care services. It notes that the costs associated with the program are justified because the demand for long-term care services continue to increase, and that the imposed requirements are necessary to ensure the availability of long-term care at appropriate levels across Ohio.

### **Recommendations**

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Ohio Department of Health should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.