



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Alicyn Carrel, Ohio Department of Health

FROM: Jacob Ritzenthaler, Regulatory Policy Advocate

DATE: February 14, 2020

RE: **CSI Review – Certificate of Need (OAC 3701-12-04, 3701-12-08, 3701-12-09, and 3701-12-23)**

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This rule package consists of three amended rules, one rescinded rule, and one new rule proposed by the Ohio Department of Health (ODH). This rule package was submitted to the CSI Office on December 10, 2019, and the public comment period was held open through January 10, 2019. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on December 10, 2019.

Ohio Administrative Code (OAC) Chapter 3701-12 establishes requirements for the Certificate of Need (CON) program, which allows for ODH review of projects that include the development, replacement, or renovation of a long-term care facility, the addition or transfer of patient beds, or increased expenditures. OAC 3701-12-04 establishes the procedure for the ODH Director's determination of whether a proposed project is reviewable. It includes amendments that clarify the process for an individual requesting a ruling of reviewability. OAC 3701-12-08 describes the process for submitting a CON application, reviews, and the decision process. Amendments to the rule include shortening the timeframe for responding to requests for additional information from 90 days to 30 days, increasing the timeframe for director approval of expedited applications from

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30 days to 45 days, and general updates. OAC 3701-12-09 establishes similar application and review processes for applications submitted under ORC 3702.593. The rule is being amended to establish new review period timelines throughout the rule. OAC 3701-12-23 establishes the review criteria and calculation formula for state and county bed need. The rule is proposed for rescission and is being replaced by a new rule due to Legislative Service Commission standards. The new rule includes amendments that update terminology and remove requirements involving facilities with more than 150 beds, the transfer of beds between counties, and review processes.

During early stakeholder outreach, ODH sent the rules to stakeholders and interested parties. No comments were received during this time or during the CSI public comment period.

The business community impacted by these rules includes long-term care facilities operating in Ohio and seeking to renovate, upgrade, or develop new facilities. The adverse impact created by the rules includes the cost of application fees, time and effort spent complying with the requirements of the rules, and potential fines and penalties for violations of the rules. Application fees cost \$5,000 for projects not involving capital expenditure, up to \$20,000 for projects involving a capital expenditure, and \$1,000 for each expedited review. Penalties for violations of the rules include fines that vary based on the scale of violation but cannot reach more than \$250,000. ODH states in the BIA that these rules ensure that the public has access to long-term care services that can adequately meet the needs of individuals.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Board should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.