



## 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 18, 2021

**RE:** **CSI Review – Certificate of Need (OAC 3701-12-01, 3701-12-05, 3701-12-10, 3701-12-11, 3701-12-12, 3701-12-18, 3701-12-19, 3701-12-20, 3701-12-23.2, and 3701-12-24)**

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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 Department as provided for in ORC 107.54.

#### Analysis

This rule package consists of ten no change rules proposed by the Ohio Department of Health (ODH). This rule package was submitted to the CSI Office on November 25, 2020, and the public comment period was held open through December 25, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on November 25, 2020.

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 3701-12-01 establishes definitions used throughout the chapter. OAC 3701-12-05 establishes the scope of review and the types of reviewable activities, including the establishment of a new facility, facility renovation, or significant expenditures. OAC 3701-12-10, 3701-12-11, and 3701-12-12 set forth the ability to obtain a replacement certificate, submit comments during review, and revise certificate of need applications. OAC 3701-12-18 and 3701-

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12-19 establish validity, follow-up, withdrawal, and monitoring requirements regarding certificates of need, including requirements to obligate capital expenditures within 24 months of obtaining a certificate and monitoring of a certificate holder's activities. OAC 3701-12-20 establishes general requirements for the review of certificates of need and requires review of building and renovation costs, space allotments, and the need of the population served. OAC 3701-12-23.2 requires that an application for a certificate of need that would replace or relocate long-term care meets certain criteria before approval. OAC 3701-12-24 concerns hospital beds that are recategorized to skilled nursing beds and requires the submission of information related to the number of patients and beds, average occupancy, and discharge. The rules in this package are submitted without changes.

During early stakeholder outreach, ODH sent the proposed rules to relevant industry stakeholders for feedback, including LeadingAge Ohio, the Ohio Health Care Association, the Academy of Senior Health Sciences, and others. No comments were received during that time or during the CSI public comment period.

The business community impacted by the rules includes long-term care facilities, specifically those seeking to develop or renovate a facility or increase the number of beds. The adverse impacts created by the rules include application fees and penalties for violations of the rules. Application fees cost \$5,000 for projects that do not involve a capital expenditure. The fee for projects involving a capital expenditure cost the greater of \$5,000 or 1.5% of the capital expenditure, not exceeding \$20,000. If a certificate holder performs a reviewable activity without approval, a fine of \$3,000 or 5% of the operating cost of the unapproved activity may be assessed. ODH may also level a civil monetary penalty if more than 110% of the capital expenditure is expended. ODH states that the rules are necessary to adhere to statute requiring maintenance of the certificate of need program and ensure that long-term care services are provided at sustainable levels.

### **Recommendations**

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

### **Conclusion**

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