



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Alicyn Carrel, Ohio Department of Health

FROM: Jacob Ritzenthaler, Regulatory Policy Advocate

DATE: May 19, 2021

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

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 two no change rules proposed by the Ohio Department of Health (ODH) as part of the statutory five-year review requirements. This rule package was submitted to the CSI Office on April 21, 2021, and the public comment period was held open through April 28, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on April 21, 2021.

Ohio Administrative Code (OAC) Chapter 3701-12 establishes requirements for the Certificate of Need (CON) program, which allows ODH to review 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 3701-12-08 describes the process for submitting a CON application, reviews, and the decision process. OAC 3701-12-09 establishes similar application and review processes for applications submitted under ORC 3702.593. The rules are proposed without changes.

During early stakeholder outreach, ODH reviewed the rules with industry stakeholders, including LeadingAge Ohio, the Ohio Health Care Association, and the Academy of Senior Health Sciences.

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No stakeholder comments were received during that time or during the CSI public comment period.

The business community impacted by these rules includes long-term care facilities seeking to develop, replace, or renovate a facility. The adverse impact created by the rules includes the cost of the application fee. The application fee costs \$5,000 for projects that do not require a capital expenditure and up to \$20,000 for projects that do include a capital expenditure. A project that is carried out while not receiving a CON approval is subject to a penalty that can range from \$3,000 to \$250,000, depending on the cost of the project. ODH states that the rules are necessary to ensure the availability of long-term care services to individuals.

Recommendations

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

Conclusion

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