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3701-12-01 Definitions.

As used in Chapter 3701-12 of the Administrative Code:

- (A) "Actual harm, but not immediate jeopardy deficiency" means a deficiency that, under 42 C.F.R. 488.404 (2011), either constitutes a pattern of deficiencies resulting in actual harm that is not immediate jeopardy or represents widespread deficiencies resulting in actual harm that is not immediate jeopardy.
- (B) ~~Except as otherwise provided in sections 3702.51 to 3702.62~~ In section 3702.51 paragraph (M) of the Revised Code, "affected person" means:
- (1) An applicant for a certificate of need, including an applicant whose application was reviewed comparatively with the application in question;
 - (2) The person that requested the reviewability ruling in question;
 - ~~(2) (3)~~ (3) Any person that resides or regularly uses long-term care facilities within the geographic service area served or to be served by the long-term care services that would be provided under the certificate of need or reviewability ruling in question; or
 - ~~(3) (3)~~ (3) Any long-term care facility that is located in the service area where the long-term care services would be provided under the certificate of need or reviewability ruling in question;
 - (4) The person that requested the reviewability ruling in question. ~~or~~
 - ~~(5) (5)~~ (5) Third-party payers that reimburse long-term care facilities for services in the service area where the long-term care services would be provided under the certificate of need or reviewability ruling in question.
- (C) "Affiliated person" means a corporation, business trust, estate, firm, partnership, association, joint stock company, insurance company, limited liability company, government unit, or other entity that:
- (1) Has an ownership or beneficial ownership interest, either direct or indirect, of five per cent or more of the voting stock of the holder of a certificate of need;
 - (2) Participates as a general, junior, or limited partner in a partnership with the holder of a certificate of need;
 - (3) Shares a common officer, director, member, trustee, or partner with the holder of a certificate of need;
 - (4) Shares twenty-five per cent or more of its employees with the holder of a certificate of need;
 - (5) Loans twenty-five per cent or more of the total capital needed to implement the activity, either directly or through a loan guarantee or similar arrangement, to the holder of a certificate of need;
 - (6) Locates the site or allows the location of the site of the activity on its campus or on its property; or

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- (7) Enters an agreement with the holder of a certificate of need to use its name as part of the name of the health care facility or service:
- (a) As part of the implementation of the activity; or
 - (b) In advertising or promotional material that holds the facility or service out as being operated or offered by it or on behalf of it.
- (D) "Applicant" means any person that submits an application for a certificate of need or reviewability determination request and who is designated in the application as the applicant.
- (E) "Bed capacity" means the total number of long-term care beds authorized at a long-term care facility.
- (F) "Certificate of need" means a written approval granted by the director to an applicant to authorize conducting a reviewable activity.
- (G) "County nursing home" has the same meaning as in section 5155.31 of the Revised Code.
- (H) "Director" means the director of health or an authorized designee of the director.
- (I) "Existing long-term care facility" means either of the following:
- (1) A long-term care facility that is licensed or otherwise authorized to operate in this state in accordance with applicable law, including a county home or a county nursing home that is certified under Title XVIII or Title XIX of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C. 301, as amended (1981), that is staffed and equipped to provide long-term care services, and is actively providing long-term care services; or
 - (2) A long-term care facility that is licensed or otherwise authorized to operate in this state in accordance with applicable law, including a county home or a county nursing home that is certified under Title XVIII or Title XIX of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C. 301, as amended (1981), or that has beds reported in an application submitted under section 3702.51 division (J)(2) ~~registered under section 3701.07~~ of the Revised Code as skilled nursing beds or long-term care beds and has provided long-term care services for at least three hundred sixty-five consecutive days within the twenty-four months immediately preceding the date a certificate of need application is filed with the director of health.
- (J) "Existing bed" or "existing long-term care bed" means a bed from an existing long-term care facility, a bed described in paragraph (O)(5) of this rule, or a bed correctly reported as a long-term care bed pursuant to section 5155.38 of the Revised Code.
- (K) "Facility" means long-term care facility as defined in paragraph (P) of this rule.
- (L) "Government unit" means the state of Ohio and any county, municipal corporation, township, or other political subdivision of the state, or any department, division, board, or other agency of any of the foregoing.
- (M) "Health maintenance organization" or "HMO" means a public or private organization organized under the law of any state that is qualified under section 1310(d) of Title XIII of the "Public Health Service Act," 87 Stat. 931 (1973), 42 U.S.C. section 300e-9 (1976).

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- (N) "Immediate jeopardy deficiency" means a deficiency that, under 42 C.F.R. 488.404 (2011), either constitutes a pattern of deficiencies resulting in immediate jeopardy to resident health or safety or represents widespread deficiencies resulting in immediate jeopardy to resident health or safety.
- (O) "Long-term care bed" or "bed" means a bed that is categorized as one of the following:
- (1) A bed that is located in a facility or portion of a facility that is ~~a nursing home~~-licensed as a nursing home under section 3721.02 of the Revised Code or a facility or portion of a facility licensed by a political subdivision certified under section 3721.09 of the Revised Code;
 - (2) A bed that is located in the portion of any facility, including a county home or county nursing home, that is certified as a skilled nursing facility under the medicare program or a nursing facility under the medicaid program and is included in the authorized maximum certified capacity of that portion of the facility;
 - (3) A bed that is reported in an application submitted under section 3702.51 division (J)(2) ~~registered under section 3701.07~~ of the Revised Code as a skilled nursing bed, or a long-term care bed; ~~or a special skilled nursing bed;~~
 - (4) A bed in a county home or county nursing home that has been certified under section 5155.38 of the Revised Code as having been in operation on July 1, 1993, and is eligible for licensure as a nursing home bed; or
 - (5) A bed held as an approved bed under a certificate of need approved by the director.
- (P) "Long-term care facility" means any of the following:
- (1) A ~~nursing home~~ facility or portion of any facility that is licensed as a nursing home under section 3721.02 of the Revised Code or by a political subdivision certified under section 3721.09 of the Revised Code;
 - (2) The portion of any facility, including a county home or a county nursing home, that is certified as a skilled nursing facility or a nursing facility under Title XVIII or XIX of the Social Security Act; or
 - (3) The portion of any hospital that contains beds reported in an application submitted under section 3702.51 division (N)(3) ~~registered under section 3701.07~~ of the Revised Code as skilled nursing beds; ~~or long-term care beds.~~
- (Q) "New long-term care facility" means any proposed long-term care facility defined in paragraph (P) of this rule that is not an existing long-term care facility as defined in paragraph (I) of this rule.
- (R) "Person" means any individual, corporation, business trust, estate, firm, partnership, association, joint stock company, limited liability company, insurance company, government unit or other entity.
- (S) "Physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the state of Ohio.

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- (T) "Political subdivision" means a municipal corporation, township, county, school district, and all other bodies corporate and politic responsible for governmental activities only in the geographic areas smaller than that of the state to which the sovereign immunity of the state attaches.
- (U) "Primary service area" the geographic region, usually comprised of the Ohio zip code in which the long-term care facility is located and contiguous zip codes, from which approximately seventy-five to eighty per cent of the facility's residents currently originate or are expected to originate.
- (V) "Principal participant" means both of the following:
 - (1) A person who has an ownership or controlling interest of at least five per cent in an applicant, in a long-term care facility that is the subject of an application for a certificate of need, or in the owner or operator of the applicant or such a facility; or
 - (2) An officer, director, trustee, or general partner of an applicant, of a long-term care facility that is the subject of an application for a certificate of need, or of the owner or operator of the applicant or such a facility.
- (W) "Related person" means an affiliated person or an individual who, by virtue of blood or adoption, is the spouse, father, mother, sister, brother, half-sister, half-brother, grandmother, grandfather, or first cousin of the holder of a certificate of need.
- (X) "Review" means the process by which the director of health examines a certificate of need application to determine whether a certificate of need for the activity will be granted.
- (Y) "Reviewability ruling" means a ruling issued by the director of health under division (A) of section 3702.52 of the Revised Code as to whether a particular proposed project is or is not a reviewable activity.
- (Z) "Secondary service area" means the geographic region, usually comprised of Ohio zip codes not included in the primary service area, excluding isolated exceptions, from which the facility's remaining residents currently originate or are expected to originate.
- (AA) "Service area" means the current and projected primary and secondary service areas to which the long-term care facility is, or will be, providing long-term care services.
- (BB) "State agency" means the director.
- (CC) "Third-party payer" means a health insuring corporation licensed under Chapter 1751. of the Revised Code, a health maintenance organization as defined in division (I) of section 3702.51 of the Revised Code, an insurance company that issues sickness and accident insurance in conformity with Chapter 3923. of the Revised Code, a state-financed health insurance program under Chapter 3701., 4123., or 5111. of the Revised Code, or any self-insurance plan.
- (DD) "To offer" means, with respect to a long-term care service, that a long-term care facility holds itself out as capable of providing, or as having the means for the provision of, a specified long-term care service. Referral to another provider of health services does not constitute offering of the health service.
- (EE) "Ultimate controlling interest" means a person who holds a majority of the voting power within a corporation, business trust, firm, partnership, association, joint stock company, limited liability company, or insurance company and is:

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- (1) The applicant for a certificate of need; or
- (2) Represented by the applicant for a certificate of need.

3701-12-04 Reviewability determinations; appeals.

- (A) The director ~~shall~~will issue a ruling on whether a particular proposed project is a reviewable activity (reviewability determination). The director may request additional information necessary to determine whether the activity is a reviewable activity as described in rule 3701-12-05 of the Administrative Code. Requests for an expedited reviewability determination ~~shall~~will expressly state that an expedited reviewability determination is requested. If a request for a reviewability determination does not expressly state that an expedited reviewability determination is being requested, the director ~~shall~~will consider the request to be for a standard reviewability determination.
- (B) The director ~~shall~~will issue a ruling within the specified timeframes as follows:
 - (1) For a standard reviewability determination, the ruling ~~shall~~will be issued not later than forty-five days after receiving a request for the ruling that is accompanied by all of the information necessary to make the ruling; or
 - (2) For an expedited reviewability determination, the ruling ~~shall~~will be issued not later than thirty days after receiving a request for the ruling that is accompanied by all of the information necessary to make the ruling.
- (C) If the director does not issue a ruling within the time frames specified in paragraphs (B)(1) and (B)(2) of this rule, the project ~~shall~~will be considered to have been ruled not a reviewable activity.
- (D) The date that the director signs the ruling ~~shall~~will be the date of issuance of the ruling.
- (E) The person that requested the reviewability ruling may appeal the ruling to the director in accordance with Chapter 119. of the Revised Code. The person who appeals to the director ~~shall~~is obligated to file with the director, not later than thirty days after the decision of the director is mailed, a notice of appeal that designates the decision, ruling, or determination the person is appealing. The director ~~shall~~will conduct an adjudication hearing in accordance with Chapter 119. of the Revised Code.

3701-12-05 Scope of review: reviewable activities.

- (A) The following activities are reviewable activities which ~~shall~~will not be conducted without a valid certificate of need.

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- (1) The establishment, development, or construction of a new long-term care facility.
 - (2) The replacement of an existing long-term care facility.
 - (3) The renovation of or addition to a long-term care facility that involves a capital expenditure of four million dollars or more, not including expenditures for equipment, staffing, or operational costs.
 - (4) Either of the following:
 - (a) An increase in long-term care bed capacity; or
 - (b) A relocation of long-term care beds from one physical facility or site to another, excluding the relocation of long-term care beds within a long-term care facility or among buildings of a long-term care facility at the same site.
 - ~~(5) The expenditure of more than one hundred ten per cent of the maximum expenditure specified in a certificate of need concerning long-term care beds.~~
 - ~~(6)~~ (5) Any failure to conduct a reviewable activity in substantial accordance with the approved application for which a certificate of need was granted, including a change in the site, if the failure occurs during the period from the approval of the application until five years after implementation of the reviewable activity for which the certificate was granted.
- (B) A project or the portion of a project that meets the requirements of this paragraph is not reviewable. The following activities are not subject to review under paragraph (A) of this rule:
- (1) Acquisition of computer hardware or software;
 - (2) Acquisition of a telephone system;
 - (3) Construction or acquisition of parking facilities;
 - (4) Correction of cited deficiencies that are in violation of federal, state or local fire, building or safety laws, ordinances, rules, or regulations and that constitute an imminent threat to public health or safety;
 - (5) Acquisition of an existing long-term care facility that does not involve a change in the number of beds;
 - (6) Mergers, consolidations or other corporate reorganizations of long-term care facilities that do not involve a change in the number of beds;
 - (7) Construction, repair or renovation of bathroom facilities;
 - (8) Construction of laundry facilities, waste disposal facilities, dietary department projects, heating and air conditioning projects, administrative offices and portions of medical office buildings used exclusively for physician services; and
 - (9) Removal of asbestos from a long-term care facility.

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3701-12-08 Certificate of need application and completeness process; public notice; certificate of need review; certificate of need expedited review; and decision process; appeals.

- (A) Except for applications for certificate of need under section 3702.593 of the Revised Code, any application to conduct a reviewable activity as defined in rule 3701-12-05 of the Administrative Code, ~~shall~~will be subject to this rule.
- (B) Applications for certificate of need that propose an increase in beds that is attributable to a relocation of existing beds from a long-term care facility as defined in division (A) of section 3702.594 of the Revised Code to another long-term care facility located within a county that is contiguous to the county from which the beds are to be relocated may be submitted at any time and ~~must~~are obligated to meet the requirements set forth in paragraph (B) of rule 3701-12-23 of the Administrative Code.
- (C) Applications for certificate of need that propose the conversion of infirmity beds to long-term care beds may be submitted at any time and ~~must~~are obligated to meet the requirements set forth in division (C) of section 3702.59 of the Revised Code.
- (D) Each applicant ~~shall~~will submit an original of the application form and necessary attachments in a manner prescribed by the director and ~~shall~~will include, but not be limited to, the following:
- (1) Name of the proposed or existing long-term care facility;
 - (2) Operator of the proposed or existing long-term care facility;
 - (3) A timetable for implementing the project;
 - (4) Identification of a specific site for the project designated by a street address or, if there is no street address, a plot or parcel number;
 - (5) A designated authorized representative who ~~shall~~are obligated to sign an affidavit that, to the best of his or her knowledge, the information in the application and any accompanying material is true and accurate; and
 - (6) In the case of an application for expedited review, a letter expressly stating that the applicant requests an expedited review of the certificate of need application.
- (E) The application ~~shall~~will be accompanied by a nonrefundable fee in the form of a check or a postal money order, payable to the treasurer state of Ohio, in the following amount:
- (1) For a project not involving a capital expenditure, five thousand dollars; or
 - (2) For a project involving a capital expenditure, the greater of five thousand dollars or one point five per cent of the capital expenditure proposed, with a maximum fee of twenty thousand dollars; and

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- (3) For each application for which an expedited review is requested in accordance with paragraph (D)(6) of this rule, an additional fee of one thousand dollars.
- (F) Upon acceptance of an application and the appropriate fee, the director ~~shall~~will review the application for completeness of information. The director ~~shall~~will consider an application complete when the applicant:
- (1) Furnishes the information specified in paragraph (D) of this rule and information required on the application form;
 - (2) Pays the fee specified in paragraph (E) of this rule; and
 - (3) If required to, adequately and completely responds to the director's requests for additional information.
- (G) If an application is not accepted, the director ~~shall~~will not review it, and ~~shall~~will return the fee specified in paragraph (E) of this rule, minus a one hundred dollar application processing fee.
- (H) To determine completeness, the director may request additional information from the applicant but ~~shall~~will not request any information that is not necessary to review the application in relation to the criteria established by this chapter, as the chapter is in effect at the time the request is made.
- (1) The director may make two requests for the additional information needed to complete an application under this paragraph.
 - (2) The applicant ~~shall~~will have the following timeframes to respond to a request for additional information:
 - (a) For an application under standard review, thirty days from the date of the letter; or
 - (b) For an application for which an expedited review was requested in accordance with paragraph (D)(6) of this rule, fourteen days from the date of the letter.
 - (3) The director ~~shall~~will deem an application incomplete if the applicant does not timely respond to the director's request for additional information or if the director does not receive the information necessary to complete the application within the appropriate time frame specified in this rule.
 - (4) When responding to requests for additional information, applicants ~~shall~~are obligated to submit responses in the manner prescribed by the director.
- (I) If a revision to an application is filed in accordance with rule 3701-12-12 of the Administrative Code, the director may make an additional request within thirty days of receipt of the revised application for information even if two requests have already been made. The applicant ~~shall~~will have thirty days to respond to a request for additional information after the filing of a revised application.

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(J) The director ~~shall~~will determine completeness of a certificate of need application as follows:

(1) For an application under standard review:

(a) No later than thirty days after the director receives the application and the appropriate fee or thirty days after the director receives additional information submitted in response to the first request, the director ~~shall~~will mail to the applicant by certified mail either a notice of completeness or a second request for additional information.

(b) No later than thirty days after the director receives additional information submitted in response to the second request, the director ~~shall~~will mail to the applicant by certified mail a notice of completeness or deem the application incomplete.

(2) For an application under expedited review:

(a) No later than fourteen days after the director receives the application and the appropriate fee or fourteen days after the director receives additional information submitted in response to the first request, the director ~~shall~~will mail to the applicant by certified mail either a notice of completeness or a second request for additional information.

(b) No later than fourteen days after the director receives additional information submitted in response to the second request, the director ~~shall~~will mail to the applicant by certified mail, a notice of completeness or ~~shall~~will deem the application incomplete.

(3) In the case of a revised application, if a third request for additional information is made after the revised application is filed, no later than thirty days after the director receives additional information submitted in response to the third request, the director ~~shall~~will mail to the applicant by certified mail notice of completeness or ~~shall~~will deem the application incomplete.

(K) Except as necessary to comply with a subpoena issued under division (F) of section 3702.52 of the Revised Code, after a notice of completeness has been received, no person ~~shall~~may make revisions to information that was submitted to the director before the director mailed the notice of completeness or knowingly discuss in person, by telephone, or electronically the merits of the application with the director. A person may supplement an application after a notice of completeness has been received by submitting clarifying information to the director.

(L) The director may deny an application for any false statement knowingly made in the application or in supplemental information submitted pursuant to this rule.

(M) If the director deems an application incomplete as authorized by this rule, the director ~~shall~~will notify the applicant by certified mail, not process the application, and keep the fee specified in paragraph (E) this rule. The director's act of deeming an application incomplete and any of the other actions specified in this paragraph ~~shall~~will not be subject to appeal.

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- (N) The director ~~shall~~will review applications for certificates of need which have been declared complete to determine whether a certificate should be granted.
- (O) As provided in division (C)(5) of section 3702.52 of the Revised Code, the director or the applicant may extend the review period once, for no longer than thirty days, by written notice within thirty days after the mailing of the notice of completeness.
- (P) After the date of mailing of a notice of completeness under paragraph (J) of this rule, except as provided in division (C)(5) of section 3702.52 of the Revised Code, the director ~~shall~~will grant or deny all completed applications for certificate of need no later than the following:
 - (1) Sixty days for an application under standard review; or
 - (2) Forty-five days for an application under expedited review.
- (Q) The director may grant a certificate of need for all or part of a project that is the subject of the application and may grant the certificate with conditions that ~~must~~will be met by the holder of the certificate.
- (R) If the director does not grant or deny the certificate of need on or before the applicable deadline specified in paragraph (P) of this rule, the certificate ~~shall~~will be considered granted.
- (S) The director ~~shall~~will mail a notice of the decision on an application for a certificate of need to the applicant by certified mail and to other persons by electronic or ordinary mail upon request. The notice ~~shall~~will include a statement of the reasons for the decision, citations of the applicable provisions of the Revised Code and Administrative Code, and a description of the right to appeal the decision, in accordance with sections 3702.60 and 119.07 of the Revised Code.
- (T) The applicant may appeal to the director a decision to grant or deny a certificate of need application in accordance with Chapter 119. of the Revised Code. The director ~~shall~~is obligated to conduct an adjudication hearing in accordance with Chapter 119. of the Revised Code.
 - (1) The applicant also ~~shall~~is obligated to file a notice with the director not later than thirty days after the date the director mailed the order; and
 - (2) The applicant that appeals the director's decision to grant or deny a certificate of need application ~~must~~is obligated to prove by a preponderance of the evidence that the director's decision was not in accordance with sections 3702.52 to 3702.62 of the Revised Code or Chapter 3701-12 of the Administrative Code.
- (U) The applicant that was party to and participated in an adjudication hearing as authorized by division (A) of section 3702.60 of the Revised Code and paragraph (T) of this rule may appeal to the tenth district court of appeals the decision issued by the director following the adjudication hearing. Each person who appeals to the tenth district court of appeals ~~shall~~will file with the court, not later than thirty days after the director's adjudication order is mailed; a notice of appeal

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that designates the order the person is appealing. The appellant also ~~shall~~is obligated to file notice with the director not later than thirty days after the date the director mailed the order.

3701-12-09 Certificate of need application and completeness process for applications filed under section 3702.593 of the Revised Code; comparative review; review and decision process; appeals.

(A) Applications for certificate of need filed under section 3702.593 of the Revised Code to conduct a reviewable activity as defined by rule 3701-12-05 of the Administrative Code ~~shall~~will be subject to this rule.

~~(B) At the times specified in this rule, the director shall accept certificate of need applications for any of the following purposes if the proposed increase in beds is attributable solely to relocation of existing beds from an existing long term care facility in a county with excess beds to a long term care facility in a county in which there are fewer long term care beds than the county's bed need:~~

~~(1) Approval of beds in a new long term care facility or an increase of beds in an existing long term care facility if the beds are proposed to be licensed as nursing home beds under Chapter 3721. of the Revised Code;~~

~~(2) Approval of beds in a new county home or new county nursing home, or an increase of beds in an existing county home or existing county nursing home if the beds are proposed to be certified as skilled nursing facility beds under the medicare program, Title XVIII of the Social Security Act, 49 Stat. 286 (1965), 42 U.S.C. 1395, as amended (1981), or nursing facility beds under the medicaid program, Title XIX of the Social Security Act, 49 Stat. 286 (1965), 42 U.S.C. 1396, as amended (1981); or~~

~~(3) An increase of hospital beds registered pursuant to section 3701.07 of the Revised Code as long term care beds.~~

~~(C) The review period shall begin January 1, 2020 and end December 31, 2023. Thereafter, the review period shall begin on January first of the year following the end of the previous review period and shall be every four years. Applications for certificates of need shall be submitted January 1, 2020 through January 31, 2020 and every four years thereafter.~~

~~(D) Applications made under section 3702.593 of the Revised Code are subject to comparative review and the additional considerations set forth in paragraph (F) of rule 3701-12-23 of the Administrative Code if two or more applications are submitted during the same review period and any of the following apply:~~

~~(1) The applications propose to relocate beds from the same county and the number of beds for which certificates of need are being requested for relocation totals more than the number of beds available in the county from which the beds are to be relocated;~~

~~(2) The applications propose to relocate beds to the same county and the number of beds for which certificates of need are being requested for relocation totals more than the number of beds needed in the county to which the beds are to be relocated;~~

~~(3) The applications propose to relocate beds from the same service area and the number of beds left in the service area from which the beds are being relocated would be less than the state~~

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~~bed need rate determined under paragraph (J) of rule 3701-12-23 of the Administrative Code.~~

~~(E)~~ (B) To be considered timely, the director ~~must~~will need to receive an application January first through January thirty-first in the first year of a ~~four~~two year comparative process that includes the information that complies with paragraph (F) of this rule and is accompanied by the appropriate fee prescribed in paragraph (G) of this rule. If an application is not timely received, the director ~~shall~~will not review it and ~~shall~~will return the fee specified in paragraph (G) of this rule, minus a one hundred dollar application processing fee.

~~(F)~~ (C) Each applicant ~~shall~~will submit an original of the application form and necessary attachments in a manner prescribed by the director and ~~shall~~will include, but not be limited to, the following:

- (1) Name of proposed or existing long-term care facility;
- (2) Name of operator of proposed or existing long-term care facility;
- (3) A timetable for implementing the project;
- (4) Identification of a specific site for the project designated by a street address or, if there is no street address, a plot or parcel number; and
- (5) A designated authorized representative who ~~shall~~will sign an affidavit that, to the best of his or her knowledge, the information in the application and any accompanying material is true and accurate.

~~(G)~~ (D) The application ~~shall~~will be accompanied by a nonrefundable fee in the form of a check or a postal money order, payable to the treasurer state of Ohio, in the following amount:

- (1) For a project not involving a capital expenditure, five thousand dollars; or
- (2) For a project involving a capital expenditure, the greater of five thousand dollars or one point five per cent of the capital expenditure proposed, with a maximum fee of twenty thousand dollars.

~~(H)~~ (E) Upon acceptance of an application and the appropriate fee, the director ~~shall~~will review the application for completeness of information. The director ~~shall~~will consider an application complete when the applicant:

- (1) Furnishes the information specified in paragraph (F) of this rule and the information required on the application form;
- (2) Pays the fee specified in paragraph (G) of this rule; and
- (3) If required to, adequately and completely responds to the director's requests for additional information.

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~~(F)~~ (F) To determine completeness, the director may request additional information from the applicant but ~~shall~~will not request any information that is not necessary to review the application in relation to the criteria established by this chapter, as the chapter is in effect at the time the request is made.

- (1) The director may make two requests for the additional information needed to complete an application under this paragraph.
- (2) The director ~~shall~~will deem an application incomplete if the applicant does not timely respond to the director's request for additional information or if the director does not receive the information necessary to complete the application within the appropriate time frame specified in this rule.
- (3) When responding to requests for additional information, applicants ~~shall~~will submit responses in the manner prescribed by the director.
- (4) The following deadlines apply:
 - (a) No later than March first of the same year in which the application is received, the director ~~shall~~will mail to the applicant by certified mail a notice that additional information is not necessary or, by mail, a first request for additional information.
 - (b) No later than May first of the same year in which the application is received, the applicant ~~shall~~will respond to the first request for additional information.
 - (c) If a first request for additional information is mailed, no later than June first of the same year in which the application is received, the director ~~shall~~will mail to the applicant by certified mail notice that additional information is not necessary or, by mail, a second request for additional information, or deem the application incomplete.
 - (d) No later than August first of the year following the year in which the application is received, the applicant ~~shall~~will respond to the second request for additional information.
 - (e) No later than September thirtieth of the year following the year in which the application is received, the director ~~shall~~will mail to the applicant by certified mail, notice of completeness or shall deem the application incomplete.

If the dates specified in this paragraph are a weekend or a day when state offices are closed, the deadline ~~shall~~will be moved to the next business day.

~~(G)~~ (G) The director ~~shall~~will deem an application incomplete if the applicant does not timely respond to the director's request for additional information or if the director does not receive the

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information necessary to complete the application within the appropriate time frame specified in this rule.

~~(H)~~ (H) Except as necessary to comply with a subpoena issued under division (F) of section 3702.52 of the Revised Code, after a notice of completeness has been received, no person ~~shall~~will make revisions to information that was submitted to the director before the director mailed the notice of completeness or knowingly discuss in person, by telephone, or electronically the merits of the application with the director. A person may supplement an application after a notice of completeness has been received by submitting clarifying information to the director.

~~(I)~~ (I) The director may deny an application for any false statement knowingly made in the application or in supplemental information submitted pursuant to this rule.

~~(J)~~ (J) If the director deems an application incomplete as authorized by this rule, the director ~~shall~~will notify the applicant by certified mail, not process the application, and keep the fee specified in paragraph (G) this rule. The director's act of deeming an application incomplete and any of the other actions specified in this paragraph ~~shall~~will not be subject to appeal.

~~(K)~~ (K) The director ~~shall~~will review applications for certificates of need which have been declared complete to determine whether a certificate should be granted.

~~(L)~~ (L) The director may extend the review period once, for no longer than thirty days, by written notice within thirty days after the mailing of the final notice of completeness mailed under paragraph (I) of this rule. An extension by the director ~~shall~~will apply to all applications in a comparative review process. No applicant in a comparative review process may extend the review period.

~~(M)~~ (M) Except as provided in division (C)(5) of section 3702.52 of the Revised Code, the director ~~shall~~will grant or deny all completed applications for certificate of need:

- (1) No later than sixty days after the date of mailing of notice of completeness under paragraph (I) of rule this rule; or
- (2) No later than November thirtieth, or the next business day if November thirtieth is a weekend, of the year in which the application is received and a notice of completeness was mailed under paragraph (I) of this rule.

~~(N)~~ (N) The director may grant a certificate of need for all or part of a project that is the subject of the application and may grant the certificate with conditions that ~~must~~will be met by the holder of the certificate.

~~(O)~~ (O) If the director does not grant or deny the certificate of need on or before the applicable deadline specified in paragraph (P) of this rule, the certificate ~~shall~~will be considered granted.

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~~(S)~~(P) The director ~~shall~~will mail a notice of the decision on an application for a certificate of need to the applicant by certified mail and to other persons by electronic or ordinary mail upon request. The notice ~~shall~~will include a statement of the reasons for the decision, citations of the applicable provisions of the Revised Code and Administrative Code, and a description of the right to appeal the decision, in accordance with sections 3702.60 and 119.07 of the Revised Code.

~~(T)~~(Q) The applicant may appeal to the director a decision to grant or deny a certificate of need application to the director in accordance with Chapter 119. of the Revised Code. The director ~~shall~~is obligated to conduct an adjudication hearing in accordance with Chapter 119. of the Revised Code.

(1) The applicant also ~~shall~~will file notice with the director not later than thirty days after the date the director mailed the order; and

(2) The applicant that appeals the director's decision to grant or deny a certificate of need application ~~must~~is obligated to prove by a preponderance of the evidence that the director's decision was not in accordance with sections 3702.52 to 3702.62 of the Revised Code or Chapter 3701-12 of the Administrative Code.

~~(U)~~(R) The applicant that was party to and participated in an adjudication hearing as authorized by division (A) of section 3702.60 of the Revised Code and paragraph (T) of this rule may appeal to the tenth district court of appeals the decision issued by the director following the adjudication hearing. Each person who appeals to the tenth district court of appeals ~~shall~~is obligated to file with the court, not later than thirty days after the director's adjudication order is mailed; a notice of appeal that designates the order the person is appealing. The appellant also ~~shall~~will file notice with the director not later than thirty days after the date the director mailed the order.

3701-12-10 Replacement certificate of need.

(A) The director of health ~~shall~~will accept an application for a replacement certificate of need when the application is submitted following approval and within five years after implementation of the reviewable activity for which the certificate of need was granted if the applicant requests the replacement certificate of need so that a reviewable activity for which the certificate of need was granted can be implemented in a manner that is not in substantial accordance with the approved certificate of need.

(B) The director ~~shall~~will not accept an application for a replacement certificate of need that proposes to increase the number of long-term care beds to be relocated specified in the application for the approved certificate of need.

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- (C) The director ~~shall~~will review and approve or deny the application for the replacement certificate of need in the same manner as the application for the approved certificate of need.
- (D) To replace an approved certificate of need all of the following conditions ~~must~~will be met:
- (1) The applicant for the replacement certificate of need ~~must~~will be the same as the applicant for the approved certificate of need or an affiliated or related person as defined in rule 3701-12-01 of the Administrative Code;
 - (2) The source of any long-term care beds to be relocated ~~must~~will be the same as in the approved certificate of need; and
 - (3) The application for the approved certificate of need ~~must~~will not ~~have been~~be subject to comparative review under section 3702.593 of the Revised Code.
- (E) Applications for a replacement certificate of need filed pursuant to section 3702.526 ~~shall~~will be accompanied by the following:
- (1) Copies of the forms and attachments submitted for review as part of the original certificate of need application; and
 - (2) A nonrefundable fee equal to the application fee paid for the approved certificate of need in the form of a check or money order made payable to the “treasurer, state of Ohio”.
- (F) For the purpose of determining whether long-term care beds are from an existing long-term care facility, the director ~~shall~~will consider the date of filing of the application for a replacement certificate to be the same date of filing of the original application for the approved certificate of need.
- (G) Any long-term care beds that were proposed to be relocated in the approved certificate of need ~~shall~~will remain eligible to be recategorized as a different category of long-term care beds in the application for a replacement certificate of need.
- (H) Upon approval of an application for a replacement certificate of need, the original certificate of need will be automatically voided.

3701-12-11 Opportunity to submit written comments during the course of a certificate of need review.

- (A) Any affected person may submit written comments regarding an application for a certificate of need.
- (1) Such comments must be received by the following deadlines:
- (a) For applications under a standard review, by the forty-fifth day after the application is accepted for processing by the director; or

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(b) For an application for which an expedited review was requested in accordance with paragraph (D)(6) of rule 3701-12-08 of the Administrative Code, by the twenty-first day after the application is accepted for processing by the director.

(2) The director ~~shall~~will consider all written comments received by the established deadlines.

(B) For the purpose of this rule, the date the application is "accepted," means the date the application is made available to the public for review on the Ohio department of health certificate of need project website at http://publicapps.odh.ohio.gov/EID/reports/EID_Report_Criteria.aspx?type=con.

3701-12-12 Certificate of need revised applications.

(A) An applicant who has an application for a certificate of need pending with the director may revise the application to change the site of the proposed project unless either of the following applies:

(1) The director has mailed the applicant a notice of completeness under section 3702.52 of the Revised Code; or

(2) The application is subject to comparative review under section 3702.593 of the Revised Code.

(B) The only revision that may be made in the revised application is the site of the proposed project. The revised site of the proposed project ~~must~~has to be located in the same county as the site of the proposed project specified in the original application. The director may not accept a revised application if it includes revisions other than the site of the proposed project or if the revised site is located in a different county than the county in which the site specified in the original application is located.

(C) Minor changes in the project are not considered to be revisions of the application.

(D) A revised application ~~shall~~will be accompanied by an additional, non-refundable fee equal to twenty-five per cent of the fee charged for the initial application. The additional fee ~~shall~~will be deposited into the certificate of need fund created under section 3702.52 of the Revised Code.

3701-12-18 Validity requirements, follow-up and withdrawal of certificates of need.

(A) For the purposes of this rule, "holder" means the applicant to whom a certificate of need was granted. In addition to compliance with validity requirements established by any other rule of this chapter, to maintain the validity of a certificate of need, the holder ~~shall~~will:

(1) Obligate the capital expenditure, within the meaning of paragraph (A)(1)(a) of this rule, within twenty-four months after the date of mailing of the notice that the certificate was granted or, if the grant or denial of the certificate is appealed under section 3702.60 of the Revised Code, within twenty-four months after the issuance of an order granting the certificate, which order is not subject to further appeal.

(a) For the purpose of this rule, "to obligate" means:

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- (i) For a project that primarily involves construction and is to be financed through external borrowing of funds, to secure financial commitment for the stated purpose of developing the project and commence construction that continues uninterrupted except for interruptions or delays that are unavoidable due to reason's beyond the person's control, including labor strikes, natural disasters, material shortages, or comparable events.
 - (ii) For a project that primarily involves construction and is to be financed internally, to receive formal approval from the holder's board of directors or trustees, or other governing authority to commit specified funds for the implementation of the project and commence construction that continues uninterrupted except for unavoidable interruptions or delay due to reason's beyond the person's control, including labor strikes, natural disasters, material shortages, or comparable events.
 - (iii) For a project that involves no capital expenditure or only minor renovations to existing structures, to provide the long-term care service by the means specified in the approved application for the certificate.
 - (iv) For a project that primarily involves leasing a building or space that requires only minor renovations to the existing space, to execute a lease and provide the long-term care service by the means specified in the approved application for the certificate.
 - (v) For a project that primarily involves leasing a building or space that has not been constructed or requires substantial renovations to existing space, to commence construction for the purpose of implementing the reviewable activity that continues uninterrupted except for interruptions or delays that are unavoidable due to reasons beyond the person's control, including labor strikes, natural disasters, material shortages, or comparable events.
- (b) For the purposes of this rule, "commence construction" means:
- (i) For a project involving construction, the placement of any structural foundation element that becomes an integral part of the structure. A structural foundation element includes, but is not limited to, footings, piers, grade beams and infrastructure items such as pilings and caissons. The acts of surveying, staking, soil testing, demolition of existing structures, delivery of materials, establishment or connection of utility services, elimination or removal of a safety or sanitary hazard from the site and site preparation, including site grading, site filling or clearing, are not considered commencement of construction.
 - (ii) For projects involving exclusively renovations to an existing structure, the modification or removal of an integral part of the structure or portion thereof. Such modification or removal includes, but is not limited to, the modification or removal of walls and ceilings, large surface replastering, major plumbing projects, and window replacement. Minor repair and maintenance activities that minimally disrupt building components, such as minor electrical or plumbing activities, are not considered commencement of construction.

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- (c) For the purpose of this rule, "provide the long-term care service" means, in the case of a project that affects the number of long-term care beds at an existing long-term care facility, to obtain a license or certification specifying the appropriate bed capacity.
- (d) The twenty-four month period specified in paragraph (A)(1) of this rule ~~shall~~will not be extended by any means, including the granting of a subsequent or replacement certificate of need.
- (2) After obligating, maintain reasonable progress towards completion of the project. Reasonable progress includes, but is not limited to:
 - (a) When the holder maintains uninterrupted progress except for delays that are unavoidable due to reasons beyond the holder's control; or
 - (b) When the holder provides reasonable assurance that it will provide the long-term care service specified in the approved application for the certificate by the projected completion date approved by the director.
- (3) Submit all documents required by paragraph (B) of this rule for monitoring implementation of the reviewable activity in a timely manner.
- (4) Not transfer the certificate, within the meaning of section 3702.523 of the Revised Code.
- (5) Conduct the reviewable activity in substantial accordance with the approved application. A reviewable activity ~~shall~~will not be determined to be not in substantial accordance with the certificate of need solely because of either of the following:
 - (a) A decrease in bed capacity; or
 - (b) A change in the owner or operator of the facility unless any of the circumstances specified in division (B) of section 3702.59 of the Revised Code apply to the new owner or operator.
- (6) Conduct the reviewable activity at the site specified in the approved application.
- ~~(7) Not expend more than one hundred ten per cent of the maximum capital expenditure stated in the certificate.~~
 - ~~(a) A civil monetary penalty may be imposed upon a holder if the more than one hundred ten per cent of the maximum capital expenditure stated in the certificate is expended.~~
 - ~~(b) The penalty imposed shall equal the amount of the application fee paid for the approved certificate of need plus an amount equal to the expenditure overrun above one hundred ten per cent of the maximum capital expenditure stated in the certificate multiplied by 0.015.~~
 - ~~(c) The director shall notify the holder of the certificate of need of the penalty proposed under this paragraph by certified mail.~~

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~~(d) The holder of the certificate of need may appeal to the director in writing within thirty days of the date the director mailed the notice of the penalty in accordance with Chapter 119. of the Revised Code.~~

~~(e) The holder of the certificate of need may choose to pay the penalty proposed under this paragraph within thirty days of the date the director mailed the notice in lieu of an appeal.~~

- (B) The director ~~shall~~will monitor project implementation activities by holders of certificates of need. The director's monitoring ~~shall~~will include but ~~shall~~will not be limited to review of documentation submitted by holders. Each holder ~~shall~~will submit the following:
- (1) Progress reports, on forms provided by the director, not less than six months after obligating the project and every six months thereafter until the project is complete. The holder ~~shall~~will submit progress reports more frequently if requested by the director;
 - (2) An affidavit of substantial completion of the project, on a form provided by the director, upon project completion;
 - (3) Architectural drawings or design development drawings, when appropriate to the nature of the activity and when requested by the director;
 - (4) Written documentation of obligating the project, which ~~shall~~will be submitted to the director not later than the earlier of thirty days after obligating or five days after the twenty-four month period expires. Documentation of obligation may include, but ~~shall~~will not be limited to, design drawings, a statement by the general contractor attesting to the date construction commenced, a building permit issued by the building authority having jurisdiction, approval to commit the specified funds for implementation of the approved project from a board of directors or trustees or other governing authority, construction contracts, purchase or lease contracts for the building, zoning approvals, evidence of site acquisition, or secured financial agreements, licensure, certification, or registration of the long-term care beds;
 - (5) Timely notification of any delay and request for approval of any changes to the projected completion date; and
 - (6) Any other documents relevant to project implementation, upon request by the director.
- (C) The director may issue and enforce, in the manner provided in section 119.09 of the Revised Code, subpoenas and subpoenas duces tecum to compel a person to testify and produce documents relevant to the director's monitoring of the approved project. The director or the director's representative may visit sites where the activities are or will be conducted.
- (D) The director ~~shall~~will send a notice to the holder of the certificate that states whether or not the holder has obligated the approved project. The director ~~shall~~will send the notice by certified mail to the holder not later than fifteen days after the director receives the obligation documentation or fifteen days after the twenty-four month period expires, whichever is later.

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- (E) If a holder fails to obligate the approved project, the certificate of need expires regardless of whether the director has sent notice pursuant to paragraph (D) of this rule or not. No further action is required by the director. Expiration of a certificate of need does not constitute a withdrawal and the procedure provided in paragraph (F) of this rule for a withdrawal does not apply. A determination by the director that a certificate of need has expired is final and not appealable under Chapter 119. of the Revised Code.
- (F) The director may withdraw a certificate of need for failure to comply with the requirements for maintaining the validity of the certificate established by this rule or any other rule of this chapter or because the application or supplemental information contained material, false or misleading statements or knowing omissions of material information. In withdrawing a certificate, the director ~~shall~~will use the following procedures:
- (1) At least thirty days before withdrawing the certificate, the director ~~shall~~will notify the holder of the proposed withdrawal by certified mail. The notice ~~shall~~will include the reasons for the proposed action and a statement that the holder may respond to the proposal in writing within thirty days after the mailing of the notice of the proposed withdrawal.
 - (2) Before withdrawing the certificate, the director ~~shall~~will consider any information timely filed by the holder and may consider any other information that the director considers appropriate.
 - (3) The director ~~shall~~will notify the holder of the withdrawal of the certificate or the decision not to withdraw the certificate by certified mail within ninety days after the mailing of the notice of the proposed withdrawal. The notice of withdrawal ~~shall~~will specify the reasons for the withdrawal, citations of relevant provisions of the Revised Code and the Administrative Code and a description of the right to appeal the withdrawal, in accordance with Chapter 119. and section 3702.60 of the Revised Code.

3701-12-19 Monitoring of activities determined to not be reviewable activities.

- (A) The director ~~shall~~will monitor the implementation of an activity which the director has determined to not be a reviewable activity under rule 3701-12-04 of the Administrative Code, if the director determines that the activity requires monitoring under paragraph (B) of this rule. The director ~~shall~~will monitor the activity to determine whether it is implemented in the manner described in the request for the ruling and whether it still is not a reviewable activity.
- (B) The director may determine that an activity requires monitoring under this rule at the time that the activity is determined to not be a reviewable activity or at any subsequent time. The director ~~shall~~will commence monitoring when the director determines that one or more of the factors specified in this paragraph are applicable. The director may consider the following factors in determining which activities require monitoring under this rule:

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- (1) Whether the determination that the activity was not a reviewable activity was based upon representations that certain services would or would not be provided as a result of the activity;
 - (2) Whether the determination that the activity was not a reviewable activity was based upon representations that the activity would be conducted through a particular organizational structure or by a certain type of facility such as a county home;
 - (3) Whether the determination that the activity was not a reviewable activity was based upon certain configurations, types, or uses of physical space or the request lacked specificity concerning the configuration, type, or use of physical space;
 - (4) Whether the activity involved exclusion of items listed in division (B) of section 3702.511 of the Revised Code from a construction or renovation project that otherwise would have been reviewable;
 - (5) The director has reason to believe that the activity is being implemented differently from the representations made in the request for the reviewability ruling or in a manner that may make the activity a reviewable activity;
 - (6) Whether the activity is a reviewable activity if any of the conditions specified under division (B) of section 3702.511 of the Revised Code were not been met.
- (C) Upon determining that an activity requires monitoring under this rule, the director ~~shall~~will provide written notice of that determination to the person who filed the request for reviewability determination. The notice ~~shall~~will specify the provisions of paragraph (B) of this rule that form the basis for the determination that monitoring is required. In the case of monitoring on the basis of paragraph (B)(5) of this rule, the notice ~~shall~~will specify the reason why the director believes that paragraph applies.
- (D) For purposes of conducting monitoring under this rule, the director may request compliance with the provisions of this paragraph that are relevant to the basis for monitoring a particular activity, as specified in the notice provided under paragraph (C) of this rule. Upon request by the director, a person who filed the request for reviewability determination for an activity that the director determines requires monitoring under this rule ~~shall~~will do all of the following, as applicable, beginning no later than forty-five days after the director's request:
- (1) Provide progress reports on the implementation of the activity, at the times and containing the information requested by the director;
 - (2) In the case of an activity monitored under paragraph (B)(4) of this rule, provide accurate statements of costs involved in implementation or operation of the activity and supporting documentation;
 - (3) In the case of an activity monitored under paragraph (B)(3) (B)(4), or (B)(5) of this rule, provide contracts, drawings, descriptions, or other information relating to construction or renovation work associated with the activity;

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- (4) In the case of an activity monitored under paragraph (B)(1) or (B)(2) of this rule, provide information about the services to be furnished as a result of the activity, including the identity and type of the providers of the services and data on the utilization of the services;
 - (5) In the case of an activity monitored under paragraph (B)(2) of this rule, provide information about the organizational relationships of persons involved in implementing and operating the activity;
 - (6) Allow the director to have access to the site or sites at which the activity is implemented or operated and to examine records pertinent to implementation or operation of the activity, subject to applicable confidentiality laws. The director ~~shall~~is obligated to examine only those portions of the site or those records that are relevant to the basis for the determination that monitoring is required, as specified in the notice provided under paragraph (C) of this rule;
 - (7) Provide any other information that is relevant to monitoring whether the activity is being conducted in a manner consistent with the representations in the request for the ruling and that does not render it reviewable; and
 - (8) Provide documentation to verify compliance with the conditions specified under division (B) of section 3702.511 of the Revised Code, if the activity is monitored under paragraph (B)(6) of this rule.
- (E) The director ~~shall~~will monitor an activity under this rule only for the period of time necessary to determine that the activity has been implemented in accordance with the request for the reviewability ruling and in a manner that does not make it a reviewable activity. For other activities, such as activities monitored under paragraph (B)(1) of this rule, monitoring may be continuing.
- (F) Upon request by the director, the person to who filed the request for reviewability determination ~~shall~~will provide affidavits from appropriate individuals attesting to the accuracy of any information provided under this rule.

3701-12-20 General certificate of need review criteria.

- (A) The director ~~shall~~will apply each of the criteria prescribed in this rule, as applicable, when reviewing an application for a certificate of need, in addition to any criteria specific to the application that are established by this chapter of the Administrative Code and sections 3702.51 to 3702.62 of the Revised Code. An applicant for a certificate of need ~~shall~~will provide sufficient information to enable the director to perform a thorough review of the application in relation to each relevant criterion established by this chapter of the Administrative Code by completely responding to each applicable portion of the application form and attachments prescribed by the director and by attaching the necessary supporting documentation.
- (B) For projects involving any construction, renovation or remodeling, the director ~~shall~~will consider:

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- (1) The costs, methods and type of construction including energy conservation features, if applicable;
 - (2) The current and projected zoning status of the project site, if applicable; and
 - (3) Space allocations and the configuration of existing and proposed areas.
- (C) If applicable, the director ~~shall~~will consider the relationship of the project to the long-range plan of the applicant and the planning process that the applicant has employed.
- (D) The director ~~shall~~will consider the need that the population served or proposed to be served has for the services to be provided upon implementation of the project. In assessing the need for a project, the director ~~shall~~will examine:
- (1) The current and proposed primary and secondary service areas and their corresponding population;
 - (2) Travel times and the accessibility of the project site and of the sites of similar services to the proposed service area population;
 - (3) Current and projected patient origin data, by zip code;
 - (4) Any special needs and circumstances of the applicant or population proposed to be served by the proposed project, including research activities, prevalence of a particular disease, unusual demographic characteristics, cost-effective contractual affiliations, and other special circumstances; and
 - (5) Special needs related to any research activities, such as participation by the applicant in research conducted by the United States food and drug administration or clinical trials sponsored by the national institute of health, that will be conducted as a result of implementation of the reviewable activity.
- (E) The director ~~shall~~will consider the impact of the project on all other providers of similar services in the service area specified by the applicant including the impact on their utilization, market share and financial status.
- (F) The director ~~shall~~will consider alternatives to the project and the advantages, disadvantages and costs of each alternative.
- (G) If the project involves an existing long-term care facility, the director ~~shall~~will consider the historical, current and projected utilization of the facility as a whole and the utilization specific to the services affected by the project.
- (H) The director ~~shall~~will consider the effectiveness of the project in meeting the health-related needs of medically underserved groups such as low-income individuals, individuals with disabilities and minorities. If applicable, this consideration ~~shall~~will include review of the applicant's historical experience in meeting the needs of underserved groups.

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- (I) The director ~~shall~~will consider the short-term and long-term financial feasibility and the cost effectiveness of the project and its financial impact upon the applicant, other providers, health care consumers and the medicaid program established under Chapter 5162. of the Revised Code. For the purpose of this paragraph, "related or affiliated parties" means principal participants. Among other relevant matters, the director ~~shall~~will evaluate:
- (1) The availability of financing for the project, including all pertinent terms of any borrowing, if applicable;
 - (2) The operating costs specific to the project and the effect of these costs on the operating costs of the facility as a whole based upon review of balance sheets, cash flow statements and available audited financial statements;
 - (3) The effect of the project on charges and payment rates for the facility as a whole and specific to the project;
 - (4) The costs and charges associated with the project compared to the costs and charges associated with similar services furnished or proposed to be furnished by other providers; and
 - (5) The historical performance of the applicant and related or affiliated parties in providing cost-effective long-term care services.
- (J) The director ~~shall~~will consider the impact of the project on existing staffing levels, if applicable, and the availability of personnel resources to meet the applicant's projected requirements.
- (K) If medical or allied health education is an integral part of the project, the director ~~shall~~will examine the impact of the project on the advancement of the educational endeavor.
- (L) The director ~~shall~~will consider the availability of and the impact upon ancillary and support services that relate directly and indirectly to the project.
- (M) The director ~~shall~~will consider the extent to which the project, the facility as a whole and the applicant comply and will comply with applicable standards for licensure, certification, accreditation and similar approvals.
- (N) The director ~~shall~~will consider the special needs and circumstances resulting from moral and ethical values and the free exercise of religious rights of long-term care facilities administered by religious organizations.
- (O) The director ~~shall~~will consider the special needs and circumstances of inner city and rural communities.
- (P) The director ~~shall~~will consider the historical performance of the applicant and related or affiliated parties in complying with previously granted certificates of need.

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3701-12-23 Long-term care facilities and beds and bed review criteria; state and county bed need.

- (A) Except as otherwise specifically provided in this rule or in another rule of this chapter, the director ~~shall~~will apply all of the criteria prescribed by this rule when reviewing an application for a certificate of need that relates to an existing or proposed long-term care facility, including an application for:
- (1) The establishment, development, or construction of a new long-term care facility;
 - (2) The replacement of an existing long-term care facility.
 - (3) The renovation of or addition to a long-term care facility that involves a capital expenditure of four million dollars or more, not including expenditures for equipment, staffing, or operational costs;
 - (4) An increase in long-term care bed capacity;
 - (5) A relocation of long-term care beds from one physical facility or site to another, excluding relocation of beds within a long-term care facility or among buildings of a long-term care facility at the same site;
 - ~~(6) The expenditure of more than one hundred ten per cent of the maximum expenditure specified in a certificate of need concerning long-term care beds.~~
- (B) Contiguous county relocations. Applications for certificate of need that propose an increase in beds that is attributable to a relocation of existing beds from an existing long-term care facility as defined in division (A) of section 3702.594 of the Revised Code to another existing long-term care facility located within a county that is contiguous to the county from which the beds are to be relocated that meet all of the following conditions may be submitted at any time:
- (1) Not more than a total of thirty long-term care facility beds are proposed for relocation to the same existing long-term care facility regardless of the number of applications filed. Once the cumulative total of beds relocated under section 3702.594 of the Revised Code to a long-term care facility reaches thirty, no further applications under this paragraph will be accepted until a period of five years has elapsed since the implementation of the most recent reviewable activity implemented under section 3702.594 of the Revised Code has expired; and
 - (2) After the proposed relocation, there will be existing nursing home long-term care facility beds remaining in the county from which the beds are relocated.
- (C) The director ~~shall~~will not grant a certificate of need under this rule unless the application contains documentation that the project will comply with the following requirements as applicable:
- (1) For homes required to be licensed under Chapter 3721. of the Revised Code, the requirements for licensure under Chapter 3721. of the Revised Code and Chapter 3701-17 of the Administrative Code;

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- (2) For hospital long-term care beds, beds in county homes as defined in section 5155.31 of the Revised Code that are long-term care facilities as defined in this chapter, and long-term care beds in a long-term care facility, the requirements for certification as a nursing facility or skilled nursing facility under Title XVIII or XIX of the Social Security Act. 49 Stat. 620 (1935), 42 U.S.C. 301, as amended (1981).
- (D) The director ~~shall~~will consider the long-term care bed capacity of proposed projects for the establishment, construction, or development of new long-term care facilities, including replacement facilities. The director may consider the following criteria:
- (1) Whether the proposed facility's size is essential to serve a special health care need that otherwise will not be served, or will serve a special health care need in accordance with current, evidence-based standards of care;
 - (2) Whether the proposed facility is the only feasible alternative for cost-effective correction of physical plant deficiencies; or
 - (3) Whether the proposed facility is part of a continuing care retirement or life care community and the application demonstrates the following:
 - (a) The applicant will be contractually obligated to provide long-term care to current residents of the continuing care retirement or life care community; and
 - (b) The continuing care retirement or life care community currently provides and will continue to provide preference in admission to contractual residents of the community.
- (E) In reviewing a certificate of need application under this rule, the director may examine and consider, in accordance with this paragraph, any state or federal records relating to the licensure under Chapter 3721. of the Revised Code or, if applicable, the participation as a provider under Title XVIII or XIX of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C. 301, as amended (1981), of any long-term care facilities owned, operated, or managed by the applicant, the owner or the operator of the long-term care facility to which the application relates, or by any principal participant, as defined in paragraph (V) of rule 3701-12-01 of the Administrative Code, in an entity which is or will be the applicant, owner, or operator. The application ~~shall~~will contain a list of all relevant long-term care facilities with dates of ownership, operation, or management. The director also may consider records pertaining to ownership or operation by these persons of long-term care facilities in other states.
- (1) The director ~~shall~~is obligated to deny the certificate of need if the provisions of division (B) of section 3702.59 of the Revised Code apply to an application for the addition of long-term care beds to an existing long-term care facility or an application for the development of a new long-term care facility.
 - (2) The director also may deny the certificate of need if the applicant, owner, operator, or any principal participant has been the subject of a final determination of medicare or medicaid fraud or abuse.

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(F) Comparative review applications. In determining which applications should receive preference in a comparative review process, the director ~~shall~~will consider, in conjunction with all other applicable criteria prescribed by this chapter, all of the following as weighted priorities. Applications that meet all applicable criteria for certificate of need approval and that receive the most points under this paragraph will be given preference. When applications that meet all applicable criteria for certificate of need approval and that are under a comparative review process for the same county receive an equal number of points under this paragraph, the director ~~shall~~will give preference to the application that demonstrates the greatest need for the reviewable activity. The director may approve all or part of a proposed activity.

- (1) Whether the project, as described in the application, is or will be part of a continuing care retirement community (CCRC) that complies with paragraph (J)(3) of this rule upon completion of the reviewable activity. This criterion is weighted with four points for a CCRC with at least a four to one ratio of alternative beds to long-term care beds, three points with at least a three to one ratio, two points with at least a two to one ratio and one point with at least a one to one ratio. No points will be given if the ratio is less than one to one.
 - (a) The alternative beds ~~shall~~will be available to the residents and potential residents of the long-term care facility.
 - (b) Appropriate agreements ~~shall~~will exist between the long-term care facility and the alternative facility for transfer of residents.
 - (c) The applicant ~~shall~~will certify that the capital expenditure for the proposed alternative facility will be obligated, within the meaning of paragraph (A)(1)(b) of rule 3701-12-18 of the Administrative Code, at the same time as the capital expenditure for the portion of the project involving the long-term care facility.
 - (d) The applicant ~~shall~~will certify that no application will be filed by any person for a certificate of need for conversion of the alternative beds to long-term care beds for at least two years after the proposed alternative beds are occupied by residents.
 - (e) The application ~~shall~~will contain a certification that if for any reason the alternatives to inpatient long-term care cannot be developed or provided, development of the portion of the project involving the long-term care facility will be discontinued and the director will be notified immediately.
 - (f) The application ~~shall~~will contain documentation of how the long-term care facility and the alternative beds proposed will be integrated into the existing and projected community system for caring for elderly and individuals with disabilities. This documentation shall include at least:

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- (i) A thorough inventory of existing and projected alternative beds to inpatient long-term care within the county;
 - (ii) A description of the planning process leading to selection of the alternative beds proposed in the application, including discussions with appropriate community groups such as local aging agencies regarding the community's needs for alternative services; and
 - (iii) An analysis of the need in the community for the proposed alternative beds, taking into account the needs of the target population, the existing and projected alternative services and beds in the community, the ability of the target population to assume the cost for an alternative bed, and the expected effect of the alternative beds on utilization of long-term care facilities. The application also ~~shall~~will contain a demonstration of the economic viability of the proposed alternative beds.
- (2) Whether the beds will serve a medically underserved population such as low-income individuals, individuals with disabilities, or individuals who are members of racial or ethnic minority groups.
 - (a) If the project in which the beds will be included will serve low-income individuals or individuals who are members of racial or ethnic minority groups, this criterion is weighted with one point for each medically underserved population to be served by the project that is documented as being greater than or equal to twenty-five per cent of the population of the defined service area.
 - (b) If the project in which the beds will be included will primarily serve individuals with special health care needs such as traumatic or acquired brain injury, cerebral palsy, spinal cord injury or disability, multiple sclerosis, acquired immune deficiency syndrome or other similar conditions. This criterion is weighted three points.
- (3) Whether the project in which the beds will be included will provide alternatives to institutional care, such as adult day-care, home health care, respite or hospice care, mobile meals, residential care, independent living, or congregate living services. This criterion is weighted with two points.
- (4) Whether the long-term care facility's owner or operator will participate in medicaid waiver programs for alternatives to institutional care. This criterion is weighted with two points.
- (5) Whether the project in which the beds will be included will reduce alternatives to institutional care by converting residential care beds or other alternative care beds to long-term care beds. This criterion is weighted with negative two points.
- (6) Whether the long-term care facility in which the beds will be placed has positive resident and family satisfaction surveys. This criterion is weighted with one point.
- (7) Whether the long-term care facility in which the beds will be placed has fewer than fifty long-term care beds. This criterion is weighted with one point.
- (8) Whether the long-term care facility in which the beds will be placed is located within the service area of a hospital and is or will be designed to accept patients for rehabilitation after an in-patient hospital stay. This criterion is weighted with two points.

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- (9) Whether the long-term care facility in which the beds will be placed is or proposes to become a nurse aide training and testing site. This criterion is weighted with one point.
- (10) The rating, under the centers for medicare and medicaid services' five star nursing home quality rating system, of the long-term care facility in which the beds will be placed. This criterion is weighted with one point for a four star rating and two points for a five star rating at the time the application is declared complete.
- (G) Applications submitted under section 3702.593 of the Revised Code. The director ~~shall~~will:
- (1) Limit the number of beds approved for a county to no more than the number of beds determined to be needed in the receiving county in accordance with section 3702.593(C) of the Revised Code.;
- ~~(2) Maintain, after the relocation, the number of beds in the source facility's service area at least equal to the state bed need rate. For purposes of this paragraph, a facility's service area shall be either of the following:~~
- ~~(a) The census tract in which the facility is located, if the facility is located in an area designated by the United States secretary of health and human services as a health professional shortage area under the "Public Health Service Act," 88 Stat. 682 (1944), 42 U.S.C. 254 (e), as amended;~~
- ~~(b) The area that is within a fifteen mile radius of the facility's location, if the facility is not located in a health professional shortage area;~~
- ~~(i) For the purpose of this rule, "fifteen mile radius" means the circular area extending fifteen and zero tenths of a mile from the facility's main entrance;~~
- ~~(ii) The fifteen mile radius from the facility's main entrance shall be determined utilizing global positioning system ("GPS") data.~~
- ~~(3) Require the operator of the long term care facility from which beds were relocated to reduce the number of beds operated in the facility by a number of beds equal to at least ten per cent of the number of beds relocated. If these beds are in a home licensed under Chapter 3721. of the Revised Code, the long term care facility shall have the beds removed from the license. If the beds are in a facility that is certified as a skilled nursing facility or nursing facility under Title XVIII or XIX of the "Social Security Act," the facility shall surrender the certification of those beds. If the beds are registered as long term care beds under section 3701.07 of the Revised Code, the long term care facility shall surrender the registration of these beds. In calculating the number of beds to be surrendered to the director, the number of beds shall be rounded up to the nearest whole number.~~
- ~~(a) This reduction shall be completed not later than the implementation date of the project for which the beds were relocated.~~
- ~~(b) If the director has not received evidence from the facility from which the beds are relocated, of the reduction of the required number of beds on or before the date of the completion of the project, the director shall remove those beds from the facility license, certification, or registration.~~

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(H) When a certificate of need application is approved during the four year review process, upon completion of the project for which the certificate of need was granted a number of beds equal to the number of beds relocated ~~shall~~will cease to be operated in the long-term care facility from which the beds were relocated, except that the beds may continue to be operated for not more than fifteen days to allow relocation of residents to the facility to which the beds have been relocated. Effective fifteen days after the beds are relocated:

- (1) If the relocated beds are in a home licensed under Chapter 3721. of the Revised Code, the facility's license will be automatically reduced by the number of beds relocated;
- (2) If the beds are in a facility that is certified as a skilled nursing facility or nursing facility under Title XVII or XIX of the "Social Security Act," the certificate ~~shall~~will be surrendered; or
- (3) If the beds are registered under section 3701.07 of the Revised Code as long-term care beds, the director ~~shall~~will remove those beds from registration.

(I) For applications that propose an increase in beds that is attributable to a replacement or relocation of existing beds from an existing long-term care facility within the same county, the director ~~shall~~will authorize no additional beds beyond those being replaced or relocated.

(J) The director ~~shall~~will utilize the following formula when determining the number of long-term care beds needed for each county for the review process prescribed in division (B) of section 3702.593 of the Revised Code:

(1) State bed need rate calculation:

Total statewide inpatient days ÷ total bed days available of these facilities = statewide long-term care bed occupancy rate

Statewide long-term care bed occupancy rate x total statewide long-term care bed supply = total statewide number of beds occupied

Total statewide number of beds occupied ÷ ninety per cent = total statewide number of beds needed

Total statewide number of beds needed ÷ projected statewide population aged sixty-five and older) x one thousand = state bed need rate

For purposes of this rule:

Total statewide inpatient days means: the sum of inpatient days for all facilities identified by facility type as "Nursing Facility" that filed a medicaid cost report for the calendar year that is two years prior to the year in which a bed need is published for the first review process and the first phase of a four year review process.

Total bed days available of these facilities means: the sum of the long-term care bed capacity for each nursing facility that is multiplied by the number of calendar days in the

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reporting year. The reporting year for each facility will include only the number of calendar days that the facility was authorized to provide care and was providing services.

Total statewide long-term care bed supply means: utilize the most recent long-term care bed supply per county that is determined by the director. The long-term care bed supply per county ~~shall~~will include all of the following:

- (a) Licensed nursing home beds;
- (b) Beds certified as nursing facility or skilled nursing facility under Title XVIII or XIX of the Social Security Act. 49 Stat. 620 (1935), 42 U.S.C. 301, as amended (1981);
- (c) Beds in any portion of a hospital that are properly registered under section 3701.07 of the Revised Code as long-term care beds, excepting beds recategorized pursuant to section 3702.521 of the Revised Code;
- (d) Beds in a county home or county nursing home as defined in section 5155.31 of the Revised Code that were timely and properly reported as long-term care beds pursuant to section 5155.38 of the Revised Code; and
- (e) Beds held as "approved" beds under an approved certificate of need.

Projected statewide population aged sixty-five and over means: based on the Ohio department of development's projections for the year that is at least five years after the year in which a bed need is published for the four year review process.

(2) County bed need calculation;

Projected county population aged sixty-five and older ÷ one thousand ~~)~~ x state bed need rate
= number of beds needed for the county

Number of beds needed for the county - bed supply for the county = bed need or excess for the county

For purposes of this rule:

Projected county population aged sixty-five and older means: the projections for each county that were used in determining the projected statewide population aged sixty-five and over.

Bed supply for the county means: the bed supply for each county that was used in determining the total statewide long-term care bed supply.

- (K) If the formula projects a bed need for a county with an average annual occupancy rate of less than eighty-five per cent, the director ~~shall~~will find that there is no bed need except as provided in section 3702.593(C)(1)(b) of the Revised Code.
- (L) If the formula projects a bed excess for a county with an average annual occupancy rate of greater than ninety per cent, the director may approve an increase in beds equal to up to ten per cent of the long-term care bed supply for that county.

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- (M) Except as provided in paragraph (L) of this rule, if the formula projects a bed excess of one hundred beds or less for a county, the director ~~shall~~will find that there is no excess or, if the formula projects a bed excess of more than one hundred beds, the director ~~shall~~will find that there is a bed excess for the projected number of beds less one hundred.
- (N) Not later than October 1, 2023 and every four years thereafter, the director ~~shall~~will publish on the department of health's website the following:
- (1) Each county with a bed need and the number of beds needed for the county; and
 - (2) Each county with a bed excess and the number of excess beds for the county.

3701-12-23.2 Replacement of long-term care facilities and relocation of long-term care beds.

- (A) In addition to review under other applicable provisions of the Administrative Code, the director ~~shall~~will not approve an application for a certificate of need to replace an existing long-term care facility or to relocate existing long-term care beds from one site to another unless the application meets all of the criteria prescribed by this rule.
- (B) Applications submitted for a certificate of need to replace an existing long-term care facility or to relocate existing long-term care beds from one site to another ~~must~~will meet the following criteria:
- (1) The applicant or the person proposed to own or operate the facility must have the legal authority to operate the long-term care beds that are subject to the certificate of need; or
 - (2) The applicant or the person proposed to own or operate the facility must have entered into a contract to obtain the legal authority to operate the beds that are subject to the certificate of need.
- (C) The applicant provides documentation of a feasible plan to care for the residents served in the beds being replaced or relocated. The application ~~shall~~will state whether those residents will be offered admission to the beds in the new location or replacement facility and the procedure for facilitating availability of the beds to the residents.
- (D) The applicant demonstrates that replacement of the facility is more cost-effective or otherwise more feasible for the applicant than renovation of the facility being replaced. This information ~~shall~~will be provided in the form of a detailed study of the respective costs of renovation and replacement or relocation, taking into account the useful lives of the respective facilities, or documentation of the circumstances that make renovation otherwise less feasible.
- (E) The facility being replaced or from which beds are being relocated is a long term care facility, as defined in paragraph (P) of rule 3701-12-01 of the Administrative Code, and an existing long-term care facility, as defined in paragraph (I) of rule 3701-12-01 of the Administrative Code.

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- (F) The replacement of the existing facility or relocation of the existing or approved beds will not impair the access of the population served or proposed to be served by the existing facility or the existing or approved beds to quality long-term care, particularly in the case of medically underserved populations, including consideration of:
- (1) Geographic access; and
 - (2) Availability of medicaid-certified long-term care beds.
- (G) The applicant documents, and the director ~~shall~~will consider, the impact of the replacement or relocation project on costs and charges on both a per diem and an aggregate basis. This documentation ~~shall~~will include portrayal of all costs, including any costs of acquiring the existing facility or beds, and of how the costs will be recovered and a demonstration that the costs are reasonable when compared to the benefits of replacement or relocation.

3701-12-24 Monitoring of hospital beds recategorized as skilled nursing beds.

- (A) In order to assist the director in monitoring any approved projects for hospital beds recategorized as skilled nursing beds, in accordance with section 3702.521 of the Revised Code each hospital for which a certificate of need for skilled nursing beds was granted ~~shall~~will report the information prescribed by this paragraph in a manner prescribed by the director. The hospital ~~shall~~will submit the information no later than the last day of January, April, July and October of each year. The information reported ~~shall~~will cover the calendar quarter most recently ended. The information submitted ~~shall~~will include, but not be limited to:
- (1) Number of skilled nursing beds;
 - (2) The average occupancy rate of the unit;
 - (3) The average length of stay for patients in the skilled nursing bed unit;
 - (4) The number of patients whose length of stay in the skilled nursing beds exceeded thirty days and the reasons why each such patient's length of stay exceeded thirty days;
 - (5) The number of patients discharged from the skilled nursing beds to each of the following:
 - (a) Home;
 - (b) Home with home health agency;
 - (c) Nursing facility for skilled nursing care;
 - (d) Nursing facility for intermediate care;
 - (e) Hospital for acute care; or
 - (f) Other.

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- (6) A written attestation that the skilled nursing beds have not billed or received reimbursement under Title XIX of the "Social Security Act," 49 Stat. 286 (1965), 42 U.S.C. 1396 as amended (the medicaid program).
- (B) After reviewing the aggregate information submitted under paragraph (A) of this rule, the director may request additional, patient-specific information from the hospital to verify compliance with this rule and with the approved application for the certificate of need.
- (C) For the purposes of this rule, "skilled nursing bed" means a bed that was approved under former rule 3701-12-23.3 of the Administrative Code, effective May 20, 1991, and that is in the portion of the hospital that participates in the program for health insurance for the aged and disabled established by Title XVIII of the Social Security Act (1981), 42 U.S.C. 301, as amended (the medicare program).