



Ohio Department of Health issues draft amendments to Certificate of Need rules

January 9, 2020

The Ohio Department of Health (ODH) has prepared draft amendments to Ohio's Certificate of Need (CON) rules. A number of these draft rule amendments address changes to the CON laws that were made in Ohio's general operating budget for state fiscal years 2020-21 (the budget bill) and became effective October 17, 2019. However, the draft rule amendments don't address all changes made in the budget bill. While the budget bill changes are still in effect, they are not reflected in the ODH draft rules. These substantive draft rule amendments are outlined below.

Appeal of CON decisions and reviewability rulings: Perhaps the most significant change is that affected third parties have lost the right to appeal CON and reviewability ruling decisions. This change was effective through the budget bill on October 17, 2019, and provides that only the applicant for a CON or person requesting a reviewability ruling may appeal the director's decision. An affected person may still submit written comments on CON applications during the review process, but that is their only recourse or remedy. The draft rule amendments reflect the budget bill change that is already in effect.

Contiguous county bed relocations: The draft rule amendment reflects an Ohio Revised Code (ORC) amendment, that was effective March 20, 2019, that allows county homes to participate in contiguous county bed relocations. Previously, only existing licensed nursing homes could participate in contiguous county bed relocations. Under the draft rule amendment, which reflects the ORC amendment currently in effect, the director may accept for review CON applications for the contiguous county relocation of beds from an existing licensed nursing home or existing county home that is certified for participation in the Medicare or Medicaid programs to another existing licensed nursing home or existing county home that is also certified. The

restriction that a facility may only obtain up to 30 beds through the contiguous county process within a five-year period after implementation remains in effect.

Completeness process: The draft rule amendments address budget bill provisions that require the director to declare a CON application complete within 180 days after the date the application is filed. This change did not take effect on October 17, 2019. Rather, ODH was required to develop rules to implement this change; until final rules are effective, the current process and time frame for completeness remains in place. To address the 180-day time frame, the draft rule amendment provides for the applicant under a standard CON review to respond to requests for additional information within 30 days, rather than 90 days for a standard review under the current process. For an expedited review, the time frame for response remains 14 days.

Comparative review process: The draft rule amendments address budget bill changes that move the next comparative review period to January 1, 2020–December 31, 2023, and every four years thereafter. This change requires ODH to perform a new determination of each county's bed supply and bed need or excess and publish the results on its website by October 1 beginning in 2023 (and every four years thereafter). For the comparative review process beginning January 1, 2020, the director will use the 2016 bed supply and bed need for each county. Comparative review applications will be accepted in January 2020, and applications will be reviewed through September 30, 2020, with decisions rendered by November 30, 2020. The previously-provided second phase (or redistribution of surrendered beds) of the comparative review process is eliminated, although the operator of the source facility is still required to surrender to the state at least 10 percent of the number of beds relocated under the comparative review process.

Other CON provisions that were effective October 17, 2019, through the budget bill, that are not addressed in draft rule amendments are outlined below. Even though these changes are not reflected in the rules, they remain in effect through July 1, 2021.

Moratorium on CON applications: The provisions place a moratorium on the acceptance of many, but not all, CON applications beginning with the effective date of the budget bill, October 17, 2019, and ending July 1, 2021 (the end of the budget biennium). (Note that the next budget bill could extend this moratorium.)

ODH may only accept CON applications for (1) the comparative review process, (2) contiguous county bed relocations, (3) replacement of an existing long-term care facility if the new facility will have the same owner and operator and the county in which the facility is being replaced has a bed need under the 2016 bed need determination, and (4) renovation of or addition to an existing long-term care facility if the facility is in a county with a bed need under the 2016 bed need determination. Accordingly, this will prohibit ODH from accepting any CON application for an intra-county bed relocation (either the addition of beds to an existing facility or development of a new facility with intra-county beds). For a county without a bed need under the 2016 bed need determination, ODH cannot accept a CON application for a replacement, renovation or addition to an existing long-term care facility. Renovations or additions to an existing long-term care facility with a capital expenditure of less than \$2 million remain non-reviewable.

County-specific exceptions to the 2020 comparative review process: For Delaware, Greene, Lake, Licking and Median Counties, the director (1) will not apply the county's average occupancy information to determine bed need, (2) will refuse to accept an application, except for Greene County, unless the applicant is already an owner or operator of a skilled nursing facility in the receiving county, (3) will refuse to accept an application if the source facility has a four- or five-star rating unless the facility is voluntarily closing, (4) will not require that the number of beds remaining in the source facility's service area after relocation be at least equal to the state bed need rate, and (5) will not apply the criteria that require comparative review of two or more applications if the applications request beds from the same service area, and the number of beds that would remain in the source service area, will be less than the state bed need rate. The five exception counties are limited to the following increase in beds through the 2020 comparative review process:

Delaware County - 200 beds

Greene County - 99 beds

Lake County - 200 beds

Licking County - 185 beds

Medina County - 200 beds

The ODH is accepting comments on the draft rule amendments through January 10, 2020.

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