

**MEMORANDUM**

**TO:** Kaye Norton, Ohio Department of Health

**FROM:** Sydney King, Regulatory Policy Advocate

**DATE:** July 28, 2015

**RE:** CSI Review – Certificate of Need (OAC 3701-12-01, 3701-12-04, 3701-12-05, 3701-12-08, 3701-12-09, 3701-12-10, 3701-12-11, 3701-12-12, 3701-12-18, 3701-12-19, 3701-12-20, 3701-12-23, 3701-12-23.2, and 3701-12-24 )

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

This rule package consists of two no-change and twelve amended<sup>1</sup> rules<sup>2</sup> being proposed by the Ohio Department of Health (ODH). This chapter of the Ohio Administrative Code was reviewed by ODH pursuant to the statutory five-year review requirement. The rule package was submitted to the CSI Office on April 27 2015, and the comment period for the rules closed on May 27, 2015.

The rule package provides requirements for the certificate of need (CON) application process for long-term care services. In order to ensure the equitable and efficient distribution of long-term

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<sup>1</sup> Rule 3701-12-11 is being amended by more than 50 percent. Therefore, the Legislative Service Commission requires that the existing rule be rescinded and replaced by a new rule that has the same rule number.

<sup>2</sup> Rule 3701-12-05 was not included in ODH's public notification but was in the BIA. The CSI Office included the rule in its review because the rule language was available for review. Additionally, no comments were received to indicate concerns with the adverse impacts.

care beds and facilities, ODH requires long-term care facilities to perform a “certificate of need.” ODH reviews and approves facilities and the number of beds that will be located at the facilities. The CON process is lengthy and requires the long-term care facility to utilize a substantial amount of administrative resources, including legal and accounting services, to complete the application.

According to the BIA, ODH requested comments from several stakeholder groups. This included Leading Age Ohio, Ohio Health Care Association, Academy of Senior Health Sciences and various law firms. ODH amended the rule package based on the comments received during the early stakeholder outreach. No comments were received during the CSI public comment period.

ODH identifies the impacted industry as the long-term care facilities. The rule package establishes detailed requirements for the CON process. For example, the rules describe how ODH determines the completeness of an application and the number of requests for additional information. A facility would need to commit a substantial amount of staff time to understand what is required in different circumstances. The BIA identifies the application fees and penalties for noncompliance as adverse impacts. The application fee can vary depending if the project involves a capital expenditure. The CSI Office requested ODH to describe the associated administrative costs for a facility. The application requests a facility’s fiscal information. This includes operating statements, balance sheets, cash flow statements, costs per day and payment rates. Additionally, ODH’s CON decision for a facility is subject to statutory appeal rights. Therefore, many facilities utilize accounting and legal services to complete the application. However, ODH states the rule package does not require this. The costs associated with utilizing accounting and legal services would vary, depending on if the facility employs staff members that can complete the application or if the facility would need to contract for the services.

ODH eliminated requirements to provide public notice for CON applications. ODH states this was no longer necessary due to changes in technology. According to the BIA, this will reduce costs to the impacted business community.

ODH states the CON program is necessary to comply with statutory requirements and provide public access to quality long-term care services. By requiring the review and monitoring of CONs, ODH ensures the availability of long-term care at appropriate levels across the state of Ohio. The need for long-term care services by the public continues to increase.

After reviewing the proposed rules and the BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rule package is justified.

**Recommendation**

For the reasons explained above this office does not have any recommendations regarding this rule package.

**Conclusion**

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office