



**Division of Quality Assurance
CON Interpretive Guidance 2014-1
June 11, 2014**

Subject: Re-opening a Closed Nursing Home.

Summary: The re-opening of a closed nursing home, even if it has maintained its license, requires a certificate of need (CON).

Discussion: Past policy was to allow a closed, licensed nursing home to re-open at any time (even years after closure) without the need for a CON. A close examination of existing law, however, leads to the conclusion that this policy is incorrect.

Revised Code §3702.511(A)(1) states that the “Establishment, development, or construction of a new long-term care facility...” is a reviewable activity. The term “new long-term care facility” is not defined in statute, but there is a definition of “existing long-term care facility.” Revised Code §3702.51(J) states:

"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, is staffed and equipped to provide long-term care services, and is actively providing long-term care services;

(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, or that has beds 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.**¹ [Emphasis added].

This definition requires a LTC facility (in this case a nursing home) to be actively providing services to qualify as an existing LTC. If a nursing home is closed and no longer actively providing services, it is not an existing LTC facility. Revised Code §3702.51(J)(2) does provide an exception to this definition, but

¹ §3702.51(J)(2) was added in 2005 by HB 66. At the same time "...or has not been actively providing health services for less than twelve consecutive months.." was stricken from the end of the current (J)(1).



only when a CON is filed involving the LTC facility in question. If a CON has not been filed, (J)(2) does not apply. The conclusion follows that since a closed nursing home is not an existing LTC facility, the proposed re-opening of the home would result in the “establishment, development or construction” of a new LTC facility. In other words, the transition from a closed “non-existing” LTC facility to a new “existing” facility is a reviewable activity.

It should be noted that this policy also has an impact on the beds at the closed facility. Since a CON is needed to re-open a closed LTC facility, should the facility remain closed long enough that §3702.51(J)(2) does not apply even if a CON is filed, then those beds cannot be used to re-open the facility as they no longer would meet the definition of an “existing long-term care bed” under §3702.51(U).



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