

Frequently Asked Questions (as of 1/21/2014)

- 1. Recent revisions have been made in the Ohio Administrative Code to be more consistent with laws passed by the General Assembly that affect CON application and review. Some of the changes are:**
 - a.** The CON fee has been increased from 0.9% of the capital cost of the project to 1.5%. The minimum fee has increased from \$3000 to \$5000. The maximum fee remains \$20,000.
 - b.** Reviewable activities now include an addition to a long term care facility costing more than \$2 million. An addition is any increase in the square footage of a facility either by construction or by the use of another building.
 - c.** New rule 3701-12-08 establishes the CON application and completeness process for all CON applications except those filed under ORC 3702.593 which is the application filing period occurring every four years for the relocation of long term care beds to under-bedded counties.
 - d.** New rule 3701-12-09 establishes the CON application and completeness process for applications filed under 3702.593. A separate rule was deemed necessary due to the unique requirements of the inter-county relocation of beds which takes place only every 4 years.
 - e.** The provisions for pre-decision objections and public hearings have been removed. The appeal provision for an approved CON remains unchanged.
 - f.** An opportunity for written comments has been added. After an application has been declared complete, the director will consider properly filed comments filed within 30 days. The director will not normally respond to written comments; however, comments will become part of the application file.
 - g.** A new rule, 3702-12-24, establishes reporting requirements for facilities having beds that were re-categorized from hospital beds to skilled nursing beds

under ORC 3702.521. Reporting requirements are substantially reduced.

- h.** New rule 3702-12-10 establishes the process for filing a replacement CON application in accordance with ORC 3702.526.
- i.** New rule 3702-12-12 establishes the process for filing a revised CON application to change a project site in accordance with ORC 3702.522.
- j.** Reference to the "State Health Resources Plan" is no longer required.
- k.** Written notice of the activity is no longer required to be provided to the chief executive of the municipality where the activity will take place, the state senator and the state representative for the area.
- l.** The concept of "bed tracking numbers" has been introduced via a new rule. Intended to be an organized and more reliable method of accounting for the existing long term care beds and their locations, the department will implement a tracking system sometime in the near future. Impact on the provider community is expected to be minimal. Further information will be provided at the appropriate time.
- m.** A maximum of 30 long term care beds may be relocated from a contiguous county to a nursing home during a 5-year monitoring period under ORC 3702.594.

2. What activities require Certificate of Need (CON) approval in Ohio?

Briefly, reviewable activities include the development of new long term care facilities (including the re-opening of a facility not currently providing care), replacement of existing long term care facilities, increases in the capacity of a long term care facility, the relocation of long term care beds to another site, the renovation and/or addition to a long term care facility with a capital cost of more than \$2 Million and any change related to a granted CON application within 5 years including a

cost overrun of 110% of the approved cost. Specific language defining activities that require CON approval is found in Ohio Administrative Code 3701-12-05.

3. Is there a moratorium on new long term care beds?

Essentially, yes. No new long term care beds may be licensed or certified in Ohio. An increase in long term care bed capacity, or the development of a new long term care facility can only be accomplished by relocating existing long term care beds from an existing long term care facility.

4. Can long term care beds be relocated across county lines?

Under some circumstances, yes. Section 3702.594 of the ORC can authorize the relocation of up to 30 beds from a licensed nursing home to another licensed nursing home in a contiguous county. Beds may also be relocated from an "over bedded county" to an "under bedded" county at certain times. The next opportunity for this type of long term care bed relocation will be in July 2016. The inter-county relocation of beds is regulated by section 3702.593 of the ORC.

5. Is Certificate of Need approval required for a change of ownership of a long term care facility?

Generally, no. If the facility has been the subject of a CON application within the previous 5 years, the owner, operator or the CON holder should contact the program as such changes must be in accordance with the approved application.

6. Is there a Certificate of Need requirement for activities other than those that involve long term care beds?

Certificate of Need approval is only required for activities that

include long term care facilities or long term care beds. There are some hospitals, however, that have a part that has some long term care beds. In those cases, CON approval would be required if the activity involves the long term care beds. Recent revisions to the CON administrative rules have removed the remaining language that referred to non-long term care issues.

7. Is Certificate of Need approval required for the development of hospital services such as cardiac surgery?

No, only long term care beds and facilities are subject to CON approval.

8. Where can I find information to help determine if a CON is required?

The CON rules are found in chapter 3701-12 of the Ohio Administrative Code (OAC) which can be found on the CON Webpage. Staff members are also available by telephone during business hours to answer most questions. Anyone who is not sure if CON approval is required for a specific activity may request a reviewability ruling from the Director of Health by sending a written request that includes a description of the activity. A request for more information may be made by the department but a reply is generally sent within 45 days.

9. How long is the CON process and how much does it cost?

The process of CON review and approval generally ranges from 3-9 months. The cost is 1.5% of the project cost with a minimum of \$5,000 and a maximum of \$20,000. The correct fee must accompany the application and is not refundable.

10. Where can information be found about CON projects that have been done in my county?

There is a summary of all projects in Ohio on the CON Webpage that includes projects back into the 1990's. Click on "Pending Applications and CON Decisions". Contact the program at 614-466-3325 if assistance is needed.

11. How can I obtain a copy of a CON application that has been filed?

The Ohio Department of Health will provide copies of applications in response to a public records request. There is a charge for copying in some circumstances. Contact the program at 614-466-3325 for assistance.

12. What constitutes "Commencement of Construction"?

Commencement of construction means 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.

13. Can Residential Care Beds be converted to long term care beds?

Residential Care Beds cannot be converted, however, long term care beds may be relocated into space currently occupied by Residential Care Beds. In most cases CON approval is required and the space must meet current long term care licensure requirements.

14. What final documents are required to implement a CON project so that the licensure of our long term care

beds can take place?

This depends on the type of the project. At a minimum, a "Sponsor's Affidavit of Compliance" and an occupancy permit are required. The affidavit form is available on the CON Webpage. Staff members of the CON program send requests to the contact person listed on the CON application when documents are expected. The holder of the CON must provide the program with a schedule of the availability of the necessary documents. The CON project file will remain open until any licensure or certification requirements that are part of the approved application are met.

15. Can a facility "de-license" long term care beds that are going to be relocated through a CON filing?

Yes, once the CON is approved. At that time, the source facility may request that the beds be removed from its licensed/certified capacity and be placed in approved bed status. Once a bed is placed in approved status, it cannot change status except as provided in the associated CON.