

Am. Sub. H.B. 166  
As Passed by the Senate  
DOHCD57

\_\_\_\_\_ moved to amend as follows:

In line 57 of the title, after "3702.30," insert "3702.52,  
3702.57, 3702.593, 3702.60," 1  
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In line 264, after "3702.30," insert "3702.52, 3702.57,  
3702.593, 3702.60," 3  
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After line 39188, insert: 5

"**Sec. 3702.52.** The director of health shall administer a 6  
state certificate of need program in accordance with sections 7  
3702.51 to 3702.62 of the Revised Code and rules adopted under 8  
those sections. Administration of the program shall include both a 9  
standard review process and an expedited review process. 10

(A) The director shall issue rulings on whether a particular 11  
proposed project is a reviewable activity. The director shall 12  
issue a ruling not later than forty-five days after receiving a 13  
request for a ruling accompanied by the information needed to make 14  
the ruling, except that if an expedited review is requested, the 15  
ruling shall be issued not later than thirty days after receiving 16  
the request for a ruling accompanied by the information needed to 17  
make the ruling. If the director does not issue a ruling in the 18  
required time, the project shall be considered to have been ruled 19

not a reviewable activity. 20

(B)(1) Each application for a certificate of need shall be 21  
submitted to the director on forms and in the manner prescribed by 22  
the director. An application for which expedited review is 23  
requested must meet the same requirements as all other 24  
applications. 25

Each application shall include a plan for obligating the 26  
capital expenditures or implementing the proposed project on a 27  
timely basis in accordance with section 3702.524 of the Revised 28  
Code. Each application shall also include all other information 29  
required by rules adopted under division (B) of section 3702.57 of 30  
the Revised Code. 31

(2) Each application shall be accompanied by the application 32  
fee established in rules adopted under division (G) of section 33  
3702.57 of the Revised Code. Application fees received by the 34  
director under this division shall be deposited into the state 35  
treasury to the credit of the certificate of need fund, which is 36  
hereby created. The director shall use the fund only to pay the 37  
costs of administering sections 3702.11 to 3702.20, 3702.30, and 38  
3702.51 to 3702.62 of the Revised Code and rules adopted under 39  
those sections. An application fee is nonrefundable unless the 40  
director determines that the application cannot be accepted. 41

(3) The director shall review applications for certificates 42  
of need. As part of a review, the director shall determine whether 43  
an application is complete. The director shall not consider an 44  
application to be complete unless the application meets all 45  
criteria for a complete application specified in rules adopted 46  
under section 3702.57 of the Revised Code. For an application 47  
being considered under the standard review process, the director 48  
shall mail to the applicant a written notice that the application 49

is complete, or a written request for additional information, not  
later than thirty days after receiving an application or a  
response to an earlier request for information. For an application  
for which expedited review is requested, the director's notice or  
request shall be mailed not later than fourteen days after the  
director receives the application or a response to an earlier  
request for information. Except as provided in section 3702.522 of  
the Revised Code, the director shall not make more than two  
requests for additional information. The For either the standard  
or expedited review process, the director shall make a final  
determination regarding an application's completeness and issue a  
notice of the determination not later than one hundred eighty days  
after the date the director received the initial application.

The director's determination that an application is not  
complete is final and not subject to appeal.

(4) Except as necessary to comply with a subpoena issued  
under division (F) of this section, after a notice of completeness  
has been received, no person shall make revisions to information  
that was submitted to the director before the director mailed the  
notice of completeness or knowingly discuss in person or by  
telephone 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.

(C) All of the following apply to the process of granting or  
denying a certificate of need:

(1) If the project proposed in a certificate of need  
application meets all of the applicable certificate of need  
criteria for approval under sections 3702.51 to 3702.62 of the  
Revised Code and the rules adopted under those sections, the

director shall grant a certificate of need for all or part of the project that is the subject of the application by the applicable deadline specified in division (C)(4) of this section or any extension of it under division (C)(5) of this section.

(2) The director's grant of a certificate of need does not affect, and sets no precedent for, the director's decision to grant or deny other applications for similar reviewable activities.

(3) Any affected person may submit written comments regarding an application. The director shall consider all written comments received by the forty-fifth day after the application is submitted to the director, except that to be considered in an expedited review, written comments must be received by the twenty-first day after the application is submitted.

(4) Except as provided in division (C)(5) of this section, the director shall grant or deny certificate of need applications not later than sixty days after mailing the notice of completeness unless the application is receiving expedited review. If the application is receiving expedited review, the director shall grant or deny the application not later than forty-five days after mailing the notice of completeness.

(5) Except as ~~otherwise~~ provided in division (C)(6) of this section, the director or the applicant may extend the deadline prescribed in division (C)(4) of this section once, for no longer than thirty days, by written notice before the end of the deadline prescribed by division (C)(4) of this section. An extension by the director under division (C)(5) of this section shall apply to all applications that are in comparative review.

(6) No applicant in a comparative review may extend the deadline specified in division (C)(4) of this section.

(7) If the director does not grant or deny the certificate by 110  
the applicable deadline specified in division (C)(4) of this 111  
section or any extension of it under division (C)(5) of this 112  
section, the certificate shall be considered to have been granted. 113

(8) In granting a certificate of need, the director shall 114  
specify as the maximum capital expenditure the certificate holder 115  
may obligate under the certificate a figure equal to one hundred 116  
ten per cent of the approved project cost. 117

(9) In granting a certificate of need, the director may grant 118  
the certificate with conditions that must be met by the holder of 119  
the certificate. 120

(D) When a certificate of need is granted for a project under 121  
which beds are to be relocated, upon completion of the project for 122  
which the certificate of need was granted a number of beds equal 123  
to the number of beds relocated shall cease to be operated in the 124  
long-term care facility from which they are relocated, except that 125  
the beds may continue to be operated for not more than fifteen 126  
days to allow relocation of residents to the facility to which the 127  
beds have been relocated. Notwithstanding section 3721.03 of the 128  
Revised Code, if the relocated beds are in a home licensed under 129  
Chapter 3721. of the Revised Code, the facility's license is 130  
automatically reduced by the number of beds relocated effective 131  
fifteen days after the beds are relocated. If the beds are in a 132  
facility that is certified as a skilled nursing facility or 133  
nursing facility under Title XVIII or XIX of the "Social Security 134  
Act," the certification for the beds shall be surrendered. If the 135  
beds are registered under section 3701.07 of the Revised Code as 136  
skilled nursing beds or long-term care beds, the director shall 137  
remove the beds from registration not later than fifteen days 138  
after the beds are relocated. 139

(E) During the period beginning with the granting of a certificate of need and ending five years after implementation of the reviewable activity for which the certificate was granted, the director shall monitor the activities of the person granted the certificate to determine whether the reviewable activity is conducted in substantial accordance with the certificate. A reviewable activity shall not be determined to be not in substantial accordance with the certificate of need solely because of either of the following:

(1) A decrease in bed capacity;

(2) 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.

(F) When reviewing applications for certificates of need, considering appeals under section 3702.60 of the Revised Code, or monitoring activities of persons granted certificates of need, 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 review of the application, consideration of the appeal, or monitoring of the activities. In addition, the director or the director's designee may visit the sites where the activities are or will be conducted.

(G) The director may withdraw certificates of need.

(H) All long-term care facilities shall submit to the director, upon request, any information prescribed by rules adopted under division (H) of section 3702.57 of the Revised Code that is necessary to conduct reviews of certificate of need applications and to develop criteria for reviews.

(I) Any decision to grant or deny a certificate of need shall 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, and the special needs and circumstances of inner city and rural communities.

**Sec. 3702.57.** (A) The director of health shall adopt rules establishing procedures and criteria for reviews of applications for certificates of need and issuance, denial, or withdrawal of certificates.

(1) In adopting rules that establish criteria for reviews of applications of certificates of need, the director shall consider the availability of and need for long-term care beds to provide care and treatment to persons diagnosed as having traumatic brain injuries and shall prescribe criteria for reviewing applications that propose to add long-term care beds to provide care and treatment to persons diagnosed as having traumatic brain injuries.

(2) The criteria for reviews of applications for certificates of need shall relate to the need for the reviewable activity and shall pertain to all of the following matters:

(a) The impact of the reviewable activity on the cost and quality of long-term care services in the relevant service area, including, but not limited, to the historical and projected utilization of the services to which the application pertains and the effect of the reviewable activity on utilization of other providers of similar services;

(b) The quality of the services to be provided as the result of the activity, as evidenced by the historical performance of the persons that will be involved in providing the services and by the

provisions that are proposed in the application to ensure quality, 198  
including but not limited to adequate available personnel, 199  
available ancillary and support services, available equipment, 200  
size and configuration of physical plant, and relations with other 201  
providers; 202

(c) The impact of the reviewable activity on the availability 203  
and accessibility of the type of services proposed in the 204  
application to the population of the relevant service area, and 205  
the level of access to the services proposed in the application 206  
that will be provided to medically underserved individuals such as 207  
recipients of public assistance and individuals who have no health 208  
insurance or whose health insurance is insufficient; 209

(d) The activity's short- and long-term financial feasibility 210  
and cost-effectiveness, the impact of the activity on the 211  
applicant's costs and charges, and a comparison of the applicant's 212  
costs and charges with those of providers of similar services in 213  
the applicant's proposed service area; 214

(e) The advantages, disadvantages, and costs of alternatives 215  
to the reviewable activity; 216

(f) The impact of the activity on all other providers of 217  
similar services in the relevant service area, including the 218  
impact on their utilization, market share, and financial status; 219

(g) The historical performance of the applicant and related 220  
or affiliated parties in complying with previously granted 221  
certificates of need and any applicable certification, 222  
accreditation, or licensure requirements; 223

(h) The historical performance of the applicant and related 224  
or affiliated parties in providing cost-effective long-term care 225  
services; 226

(i) The special needs and circumstances of the applicant or population proposed to be served by the proposed project, including research activities, prevalence of particular diseases, unusual demographic characteristics, cost-effective contractual affiliations, and other special circumstances; 227-231

(j) The appropriateness of the zoning status of the proposed site of the activity; 232-233

(k) The participation by the applicant in research conducted by the United States food and drug administration or clinical trials sponsored by the national institutes of health. 234-236

(3) The criteria for reviews of applications shall include a formula for determining each county's long-term care bed need for purposes of section 3702.593 of the Revised Code and may include other formulas for determining need for beds. 237-240

Any rules prescribing criteria that establish ratios of beds to population shall specify the bases for establishing the ratios or mitigating factors or exceptions to the ratios. 241-243

(B) The director shall adopt rules specifying all of the following: 244-245

(1) Information that must be provided in applications for certificates of need; 246-247

(2) Procedures for reviewing applications for completeness of information; 248-249

(3) Criteria for determining that the application is complete; 250-251

(4) Procedures for making a final determination regarding an application's completeness and issuing a notice of the determination within the one-hundred-eighty-day time frame 252-254

specified in division (B)(3) of section 3702.52 of the Revised Code. 255  
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(C) The director shall adopt rules specifying requirements 257  
that holders of certificates of need must meet in order for the 258  
certificates to remain valid and establishing definitions and 259  
requirements for obligation of capital expenditures and 260  
implementation of projects authorized by certificates of need. 261

(D) The director shall adopt rules establishing criteria and 262  
procedures under which the director of health may withdraw a 263  
certificate of need if the holder fails to meet requirements for 264  
continued validity of the certificate. 265

(E) The director shall adopt rules establishing procedures 266  
under which the department of health shall monitor project 267  
implementation activities of holders of certificates of need. The 268  
rules adopted under this division also may establish procedures 269  
for monitoring implementation activities of persons that have 270  
received nonreviewability rulings. 271

(F) The director shall adopt rules establishing procedures 272  
under which the director of health shall review certificates of 273  
need whose holders exceed or appear likely to exceed an 274  
expenditure maximum specified in a certificate. 275

(G) The director shall adopt rules establishing certificate 276  
of need application fees sufficient to pay the costs incurred by 277  
the department for administering sections 3702.51 to 3702.62 of 278  
the Revised Code. Unless rules are adopted under this division 279  
establishing different application fees, the application fee for a 280  
project not involving a capital expenditure shall be three 281  
thousand dollars and the application fee for a project involving a 282  
capital expenditure shall be nine-tenths of one per cent of the 283  
capital expenditure proposed subject to a minimum of three 284

thousand dollars and a maximum of twenty thousand dollars. 285

(H) The director shall adopt rules specifying information 286  
that is necessary to conduct reviews of certificate of need 287  
applications and to develop criteria for reviews that long-term 288  
care facilities are to submit to the director under division (H) 289  
of section 3702.52 of the Revised Code. 290

(I) The director shall adopt rules defining "affiliated 291  
person," "related person," and "ultimate controlling interest" for 292  
purposes of section 3702.523 of the Revised Code. 293

(J) The director shall adopt rules prescribing requirements 294  
for holders of certificates of need to demonstrate to the director 295  
under section 3702.525 of the Revised Code that reasonable 296  
progress is being made toward completion of the reviewable 297  
activity and establishing standards by which the director shall 298  
determine whether reasonable progress is being made. 299

(K) The director shall adopt all rules under divisions (A) to 300  
(J) of this section in accordance with Chapter 119. of the Revised 301  
Code. The director may adopt other rules as necessary to carry out 302  
the purposes of sections 3702.51 to 3702.62 of the Revised Code. 303

**Sec. 3702.593.** (A) At the times specified in this section, 304  
the director of health shall accept, for review under section 305  
3702.52 of the Revised Code, certificate of need applications for 306  
any of the following purposes if the proposed increase in beds is 307  
attributable solely to relocation of existing beds from an 308  
existing long-term care facility in a county with excess beds to a 309  
long-term care facility in a county in which there are fewer 310  
long-term care beds than the county's bed need: 311

(1) Approval of beds in a new long-term care facility or an 312  
increase of beds in an existing long-term care facility if the 313

beds are proposed to be licensed as nursing home beds under Chapter 3721. of the Revised Code; 314  
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(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, 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; 316  
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(3) An increase of hospital beds registered pursuant to section 3701.07 of the Revised Code as long-term care beds. 324  
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(B) For the purpose of implementing this section, the director shall do all of the following: 326  
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(1) Not later than ~~April 1, 2012~~ October 1, 2023, and every four years thereafter, determine the long-term care bed supply for each county, which shall consist of all of the following: 328  
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(a) Nursing home beds licensed under Chapter 3721. of the Revised Code; 331  
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(b) Beds certified as skilled nursing facility beds under the medicare program or nursing facility beds under the medicaid program; 333  
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(c) Beds in any portion of a hospital that are properly registered under section 3701.07 of the Revised Code as skilled nursing beds, long-term care beds, or special skilled nursing beds; 336  
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(d) Beds in a county home or county nursing home that are certified under section 5155.38 of the Revised Code as having been in operation on July 1, 1993, and are eligible for licensure as 340  
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nursing home beds;	343
(e) Beds described in division (O)(5) of section 3702.51 of the Revised Code.	344 345
(2) Determine the long-term care bed occupancy rate for the state at the time the determination is made;	346 347
(3) For each county, determine the county's bed need by identifying the number of long-term care beds that would be needed in the county in order for the statewide occupancy rate for a projected population aged sixty-five and older to be ninety per cent.	348 349 350 351 352
In determining each county's bed need, the director shall use the formula developed in rules adopted under section 3702.57 of the Revised Code. A determination shall be made <u>not later than October 1, 2023, and every four years thereafter</u> . After each determination is made, the director shall publish the county's bed need on the web site maintained by the department of health.	353 354 355 356 357 358
(C) The director's consideration of <u>an application for a certificate of need</u> that would increase the number of beds in a county shall be consistent with the county's bed need determined under division (B) of this section except as follows:	359 360 361 362
(1) If a county's occupancy rate is less than eighty-five per cent, the county shall be considered to have no need for additional beds.	363 364 365
(2) Even if a county is determined not to need any additional long-term care beds, the director may approve an increase in beds equal to up to ten per cent of the county's bed supply if the county's occupancy rate is greater than ninety per cent.	366 367 368 369
(D)(1) <u>The For the review process used in considering certificate of need applications, the director shall establish a</u>	370 371

~~review period for the first review process shall begin July 1, 2010 that begins January 1, 2020, and end June 30, 2012 ends December 31, 2023. The next review period shall begin July 1, 2012, and end June 30, 2016.~~ Thereafter, the review period for each comparative review process shall begin on the first day of ~~July~~ January following the end of the previous review period and shall be four years.

(2) Certificate of need applications shall be accepted during the first month of the review period and reviewed through the thirtieth day of ~~April~~ September of the following year in which the review period begins.

~~(3) Except for the first review period after October 16, 2009, each review period may consist of two phases. The first phase of the review period shall be the period during which the director accepts and reviews certificate of need applications as provided in division (D)(2) of this section. If the director determines that there will be acceptance and review of additional certificate of need applications, the second phase of the review period shall begin on the first day of July of the third year of the review period. The second phase shall be limited to acceptance and review of applications for redistribution of beds made available pursuant to division (I) of this section. During the period between the first and second phases of the review period, the director shall act in accordance with division (I) of this section.~~

(E) The director shall consider certificate of need applications in accordance with all of the following:

(1) The number of beds approved for a county shall include only beds available for relocation from another county and shall not exceed the bed need of the receiving county;

(2) The director shall consider the existence of community resources serving persons who are age sixty-five or older or disabled that are demonstrably effective in providing alternatives to long-term care facility placement.

(3) The director shall approve relocation of beds from a county only if, after the relocation, the number of beds remaining in the county will exceed the county's bed need by at least one hundred beds;

(4) The director shall approve relocation of beds from a long-term care facility only if, after the relocation, the number of beds in the facility's service area is at least equal to the state bed need rate. For purposes of this division, 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.

(F) Applications made under this section are subject to comparative review if two or more applications are submitted during the same review period and any of the following applies:

(1) The applications propose to relocate beds from the same county and the number of beds for which certificates of need are being requested 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 431  
 being requested totals more than the number of beds needed in the 432  
 county to which the beds are to be relocated. 433

(3) The applications propose to relocate beds from the same 434  
 service area and the number of beds left in the service area from 435  
 which the beds are being relocated would be less than the state 436  
 bed need rate determined by the director. 437

(G) In determining which applicants should receive preference 438  
 in the comparative review process, the director shall consider all 439  
 of the following as weighted priorities: 440

(1) Whether the beds will be part of a continuing care 441  
 retirement community; 442

(2) Whether the beds will serve an underserved population, 443  
 such as low-income individuals, individuals with disabilities, or 444  
 individuals who are members of racial or ethnic minority groups; 445

(3) Whether the project in which the beds will be included 446  
 will provide alternatives to institutional care, such as adult 447  
 day-care, home health care, respite or hospice care, mobile meals, 448  
 residential care, independent living, or congregate living 449  
 services; 450

(4) Whether the long-term care facility's owner or operator 451  
 will participate in medicaid waiver programs for alternatives to 452  
 institutional care; 453

(5) Whether the project in which the beds will be included 454  
 will reduce alternatives to institutional care by converting 455  
 residential care beds or other alternative care beds to long-term 456  
 care beds; 457

(6) Whether the facility in which the beds will be placed has 458  
 positive resident and family satisfaction surveys; 459

(7) Whether the facility in which the beds will be placed has fewer than fifty long-term care beds; 460  
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(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 designed to accept patients for rehabilitation after an in-patient hospital stay; 462  
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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; 466  
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(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. 469  
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(H) A person who has submitted an application under this section that is not subject to comparative review may revise the site of the proposed project pursuant to section 3702.522 of the Revised Code. 472  
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(I) When a certificate of need application is approved ~~during the initial phase of a four year review period~~, in addition to the actions required by division (D) of section 3702.52 of the Revised Code, the long-term care facility from which the beds were relocated shall 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 these beds. If the beds are registered as skilled nursing beds or long-term care beds under section 3701.07 of the Revised Code, the

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long-term care facility shall surrender the registration for these 490  
beds. This reduction shall be made not later than the completion 491  
date of the project for which the beds were relocated. 492

~~(J)(1) Once approval of certificate of need applications in 493  
the first phase of a four year review period is complete, the 494  
director shall make a new determination of the bed need for each 495  
county by reducing the county's bed need by the number of beds 496  
approved for relocation to the county. The new bed need 497  
determination shall be made not later than the first day of April 498  
of the third year of the review period. 499~~

~~(2) The director may publish on the department's web site the 500  
remaining bed need for counties that will be considered for 501  
redistribution of beds that, in accordance with division (I) of 502  
this section, have ceased or will cease to be operated. The 503  
director shall base the determination of whether to include a 504  
county on all of the following: 505~~

~~(a) The statewide number of beds that, in accordance with 506  
division (I) of this section, have ceased or will cease to be 507  
operated; 508~~

~~(b) The county's remaining bed need; 509~~

~~(c) The county's bed occupancy rate. 510~~

~~(K) If the director publishes the remaining bed need for a 511  
county under division (J)(2) of this section, the director may, 512  
beginning on the first day of the second phase of the review 513  
period, accept certificate of need applications for redistribution 514  
to long term care facilities in that county of beds that have 515  
ceased or will cease operation in accordance with division (I) of 516  
this section. The total number of beds approved for redistribution 517  
in the second phase of a review period shall not exceed the number 518  
that have ceased or will cease operation in accordance with 519~~

~~division (I) of this section. Beds that are not approved for  
redistribution during the second phase of a review period shall  
not be available for redistribution at any future time.~~

**Sec. 3702.60.** (A) ~~Any affected person may appeal a  
reviewability ruling to the director of health in accordance with  
Chapter 119. of the Revised Code, and the director shall provide  
an adjudication hearing in accordance with that chapter. An  
affected person may appeal the director's ruling in the  
adjudication hearing to the tenth district court of appeals.~~

~~(B) The applicant for a certificate of need ~~applicant or  
another affected person~~ may appeal to the director ~~in accordance  
with Chapter 119. of the Revised Code~~ of health a decision issued  
by the director to grant or deny a certificate of need  
application. The person that requested a reviewability ruling may  
appeal to the director with respect to the resulting ruling issued  
by the director.~~

The appeal by the applicant or person shall be made in  
accordance with Chapter 119. of the Revised Code, and the director  
shall provide an adjudication hearing in accordance with that  
chapter. ~~The certificate of need applicant or other affected  
person that appeals the director's decision to grant or deny a  
certificate of need application~~ In the appeal, the applicant or  
person must prove by a preponderance of the evidence that the  
director's decision or ruling is not in accordance with sections  
3702.52 to 3702.62 of the Revised Code or rules adopted under  
those sections. ~~The certificate of need~~

The applicant or an affected person that was a party to and  
participated in an adjudication hearing conducted under this  
division may appeal to the tenth district court of appeals the

decision issued by the director following the adjudication 549  
hearing. 550

~~(C)~~(B) The holder of a certificate of need ~~holder~~ may appeal 551  
to the director in accordance with Chapter 119. of the Revised 552  
Code a decision issued by the director under section 3702.52 or 553  
3702.525 of the Revised Code to withdraw a certificate of need, 554  
and the director shall provide an adjudication hearing in 555  
accordance with that chapter. The person may appeal the director's 556  
ruling in the adjudication hearing to the tenth district court of 557  
appeals. 558

~~(D)~~(C) Any person determined by the director to have violated 559  
section 3702.53 of the Revised Code may appeal that determination, 560  
or the penalties imposed under section 3702.54 or 3702.541 of the 561  
Revised Code, to the director in accordance with Chapter 119. of 562  
the Revised Code, and the director shall provide an adjudication 563  
hearing in accordance with that chapter. The person may appeal the 564  
director's ruling in the adjudication hearing to the tenth 565  
district court of appeals. 566

~~(E)~~(D) Each person appealing under this section to the 567  
director shall file with the director, not later than thirty days 568  
after the decision, ruling, or determination of the director was 569  
mailed, a notice of appeal designating the decision, ruling, or 570  
determination appealed from. 571

~~(F)~~(E) Each person appealing under this section to the tenth 572  
district court of appeals shall file with the court, not later 573  
than thirty days after the date the director's adjudication order 574  
was mailed, a notice of appeal designating the order appealed 575  
from. The appellant also shall file notice with the director not 576  
later than thirty days after the date the order was mailed. 577

(1) Not later than thirty days after receipt of the notice of 578

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appeal, the director shall prepare and certify to the court the complete record of the proceedings out of which the appeal arises. The expense of preparing and transcribing the record shall be taxed as part of the costs of the appeal. In the event that the record or a part thereof is not certified within the time prescribed by this division, the appellant may apply to the court for an order that the record be certified.

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(2) In hearing the appeal, the court shall consider only the evidence contained in the record certified to it by the director. The court may remand the matter to the director for the admission of additional evidence on a finding that the additional evidence is material, newly discovered, and could not with reasonable diligence have been ascertained before the hearing before the director. Except as otherwise provided by statute, the court shall give the hearing on the appeal preference over all other civil matters, irrespective of the position of the proceedings on the calendar of the court.

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(3) The court shall affirm the director's order if it finds, upon consideration of the entire record and any additional evidence admitted under division ~~(F)~~(E)(2) of this section, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it shall reverse, vacate, or modify the order.

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(4) If the court determines that the director committed material procedural error, the court shall remand the matter to the director for further consideration or action.

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~~(G) The court may award reasonable attorney's fees against the appellant if it determines that the appeal was frivolous. Sections 119.092, 119.093, and 2335.39 of the Revised Code do not apply to adjudication hearings under this section or section~~

<del>3702.52 of the Revised Code and judicial appeals under this section.</del>	609
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<del>(H)(F) No person may intervene in an appeal brought under this section."</del>	611
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In line 82854, after "3702.30," insert "3702.52, 3702.57,	613
3702.593, 3702.60,"	614
After line 96539, insert:	615
" <b>Section 737.____.</b> COMPLETENESS OF CERTIFICATE OF NEED	616
APPLICATIONS	617
Notwithstanding the 180-day time frame for the Director of	618
Health to make determinations of completeness of certificate of	619
need applications, as specified in division (B)(3) of section	620
3702.52 of the Revised Code, as amended by this act, the time	621
frames governing the Director's determinations of completeness	622
that are specified in rule 3701-12-08 and rule 3701-12-09 of the	623
Administrative Code, as those rules exist on the effective date of	624
this section, shall continue to govern the Director in making	625
determinations of completeness until the Director adopts rules	626
that reflect the 180-day time frame established by this act.	627
<b>Section 737.____.</b> CERTIFICATE OF NEED APPLICATIONS IN JANUARY	628
2020	629
Notwithstanding section 3702.593 of the Revised Code or any	630
other conflicting provision of sections 3702.51 to 3702.62 of the	631
Revised Code, all of the following apply to the Director of Health	632
when reviewing certificate of need applications during January	633
2020:	634
(A) Except as provided in division (B) of this section, the	635

Director shall use the long-term care bed supply and bed need made  
in calendar year 2016. 636  
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(B) In the case of Delaware, Greene, Lake, Licking, and  
Medina counties, the Director shall do the following: 638  
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(1) Redetermine the bed supply and bed need determinations  
made in calendar year 2016 using the same data that was used in  
those determinations but without applying division (C) of section  
3702.593 of the Revised Code; 640  
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(2) Refuse to accept a certificate of need application for  
any of the specified counties, other than Greene County, unless  
the applicant is an owner of, or is the operator of, a skilled  
nursing facility in the county to which the certificate of need  
application proposes to relocate beds; 644  
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(3) Refuse to accept a certificate of need application for  
any of the specified counties if the source of the beds to be  
relocated is a facility that has a four- or five-star rating under  
the nursing home quality rating system established by the U.S.  
Centers for Medicare and Medicaid Services on the date the beds  
are under contract for purchase or transfer unless the facility is  
voluntarily closing; 649  
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(4) Use, as applicable, either of the following: 656

(a) The review process set forth in division (E) of section  
3702.593 of the Revised Code, excluding division (E)(4) of that  
section; 657  
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(b) The comparative review process set forth in division (F)  
of section 3702.593 of the Revised Code, excluding division (F)(3)  
of that section, for the purpose of limiting the increase in beds  
in the specified counties in accordance with the following: 660  
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(i) Delaware County, 200 total beds; 664

(ii) Greene County, 99 total beds;	665
(iii) Lake County, 200 total beds;	666
(iv) Licking County, 185 total beds;	667
(v) Medina County, 200 total beds.	668
<b>Section 737.____. CERTIFICATE OF NEED MORATORIUM</b>	669
(A) As used in this section, "existing bed," "existing long-term care facility," and "long-term care facility" have the same meanings as in section 3702.51 of the Revised Code.	670 671 672
(B) During the period beginning on the effective date of this section and ending July 1, 2021, the Director of Health shall accept for review a certificate of need application only in accordance with this section, notwithstanding division (A) of section 3702.59 of the Revised Code.	673 674 675 676 677
(C) To be accepted for review under this section, a certificate of need application must meet either of the following requirements:	678 679 680
(1) The application must be submitted pursuant to section 3702.593 or 3702.594 of the Revised Code and, if applicable, in accordance with the section of this act titled "CERTIFICATE OF NEED APPLICATIONS IN JANUARY 2020"; or	681 682 683 684
(2) The application must propose either of the following:	685
(a) The replacement of an existing long-term care facility, if the replacement facility will have the same owner and operator that the existing facility has on the effective date of this section and the replacement will occur in a county with an identified bed need under section 3702.593 of the Revised Code according to the Director's county bed need determination made in calendar year 2016; or	686 687 688 689 690 691 692

(b) The renovation of or an addition to an existing long-term care facility as provided in division (A)(3) of section 3702.511 of the Revised Code, if the facility is in a county with an identified bed need under section 3702.593 of the Revised Code according to the Director's county bed need determination made in calendar year 2016.

(D) The Director shall not accept an application under this section unless it otherwise complies with sections 3702.51 to 3702.62 of the Revised Code and, if applicable, the section of this act titled "CERTIFICATE OF NEED APPLICATIONS IN JANUARY 2020."

(E) This section does not apply to a certificate of need application that is pending on the effective date of this section."

The motion was \_\_\_\_\_ agreed to.

SYNOPSIS

**Certificate of Need Program procedures** 707

**R.C. 3702.52, 3702.57, 3702.593, and 3702.60; Sections 737.\_\_\_\_, 737.\_\_\_\_, and 737.\_\_\_\_** 708  
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Restores, with revisions, certain House-passed provisions pertaining to the procedures that are used in administering the Certificate of Need (CON) Program, as follows:

--Reinstates the House provision that (1) requires the Ohio Department of Health (ODH) to adopt rules specifying procedures for determining whether a certificate of need (CON) application is complete and (2) requires ODH to issue a notice of that

determination within 180 days of receiving the initial 717  
application, but adds a provision specifying that existing rules 718  
on completeness of CON applications remain in effect until the new 719  
rules are adopted. 720

--Reinstates the House provision that authorizes CON 721  
applications in January 2020 to be reviewed according to the bed 722  
supply and bed need determinations made in 2016, but specifies 723  
conditions applicable only to CON applications concerning proposed 724  
projects in Delaware, Greene, Lake, Licking, and Medina counties 725  
and specifies the number of beds that may be added in each of 726  
those counties; 727

--Adds provisions that limit the types of CON applications 728  
that the ODH Director may accept until July 1, 2021; 729

--Reinstates the House provision that eliminates the second 730  
phase of the four-year CON review process, but changes the dates 731  
that the county bed supply and need determinations are to be made; 732

--Reinstates the House provision that specifies who may 733  
appeal the ODH Director's CON reviewability rulings, while also 734  
retaining current law authorizing the use of the Administrative 735  
Procedure Act rather than requiring the use of a new 736  
administrative review process; 737

--Adds a provision eliminating the ability to award attorney 738  
fees against a CON appellant whose appeal is found to be 739  
frivolous. 740