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# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Pizzulli and Jarrells

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### SUMMARY

#### **CON Program for recovery housing residences**

- Requires the Director of the Ohio Department of Mental Health and Addiction Services (OhioMHAS) to administer a certificate of need (CON) Program for various activities relating to the operation of, need for, and location of recovery housing residences.
- Specifies various duties of the OhioMHAS Director under the CON Program, including reviewing applications, issuing rulings, hearing appeals, imposing civil penalties, and adopting rules governing the program.
- Establishes a CON application fee that is based on the type of project being proposed and primarily according to the number of beds involved in the project.

#### **Inspections and investigations by ADAMH boards**

- Requires boards of alcohol, drug addiction, and mental health services (ADAMH boards) to conduct annual inspections of recovery housing residences in their jurisdiction.
- Requires that complaints be investigated by ADAMH boards, rather than by OhioMHAS or its contractors and permits the ADAMH boards to contract with individuals to serve as inspectors and investigators.
- Designates the application fees and civil penalties collected under the CON Program as funding sources to assist in defraying the inspection and investigation costs incurred by the ADAMH boards.

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## DETAILED ANALYSIS

### CON PROGRAM FOR RECOVERY HOUSING RESIDENCES

#### Creation of the CON Program

In a manner similar to the certificate of need (CON) Program that currently regulates the distribution of long-term facilities throughout the state,<sup>1</sup> the bill requires the Director of the Ohio Department of Mental Health and Addiction Services (OhioMHAS) to administer a CON Program for recovery housing residences. A recovery housing residence is described by current law as a place for individuals recovering from alcohol use disorder or drug addiction that provides an alcohol-free and drug-free living environment, peer support, assistance with obtaining alcohol and drug addiction services, and other recovery assistance for alcohol use disorder and drug addiction.<sup>2</sup>

OhioMHAS currently monitors the operation of recovery housing residence by either certifying them through its own process or by accepting accreditation from private organizations, including the Ohio affiliate of the National Alliance for Recovery Residences and Oxford House. The need for recovery housing residences or their location, however, is not directly addressed under the current monitoring system.<sup>3</sup>

#### Activities subject to CON review

The bill describes a certificate of need as a written approval granted by the OhioMHAS Director to an applicant to authorize conducting a reviewable activity.<sup>4</sup> A reviewable activity – that is, a type of activity that requires a CON under the bill before the activity may proceed – includes all of the following:<sup>5</sup>

- Establishment, development, or construction of a new building that will be operated as a recovery housing residence;
- Replacement of an existing building that is operated as a recovery housing residence or purchase or any other form of acquisition of an existing building that will be operated as a recovery housing residence;
- Renovation of or addition to an existing building that is operated as a recovery housing residence that involves a capital expenditure of \$500,000 or more, excluding expenditures for equipment, staffing, or operational costs;
- An increase in bed capacity at a recovery housing residence;

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<sup>1</sup> See R.C. 3702.51 to 3702.62, not in the bill.

<sup>2</sup> R.C. 5119.01, not in the bill.

<sup>3</sup> R.C. 5119.39, not in the bill.

<sup>4</sup> R.C. 5119.398.

<sup>5</sup> R.C. 5119.399(A).

- Relocation of recovery housing residence beds from one physical building or site to another, excluding relocation of beds within a building or among buildings located on the same site;
- Any failure to conduct a reviewable activity in substantial accordance with the CON that was granted for the activity, including a change in the site, if the failure occurs within five years after implementing the activity.

The bill also specifies what activities are not reviewable and, therefore, do not require a CON to proceed. Examples include acquisition of computer or telephone systems; construction of parking, bathroom, or laundry facilities; and a corporate reorganization or acquisition of an existing recovery housing residence, as long as there is no change in the number of beds.<sup>6</sup>

### **CON not needed for existing residences**

The bill specifies that a CON from OhioMHAS is not required in order to continue operating a recovery housing residence that was in operation before the bill's effective date. This exemption, however, does not apply if the continued operation involves any other reviewable activity that requires a CON.<sup>7</sup>

### **Administration of the CON Program**

The bill requires the OhioMHAS Director to administer the CON Program. The Director is required to review CON applications and issue rulings on whether a proposed project is a reviewable activity. The Director must grant a CON for all or part of a project if the project proposed meets all of the applicable criteria for approval under any adopted rules. The Director is required to monitor activities of the CON recipient for five years after the CON is granted.<sup>8</sup>

### **Applications and fees**

CON applications must be submitted to the OhioMHAS Director. Each application must also include an application fee. The amount of the fee is to be determined according to whichever of the following applies:

1. If the proposed project is based on a specific number of resident beds, then the fee is an amount that equals \$250 for each bed;
2. If the proposed project is not based on a specific number of beds, the fee is an amount the Director specifies according to adopted rules.<sup>9</sup>

### **Criteria considered in reviewing applications**

The OhioMHAS Director is required to adopt rules establishing the procedures and criteria for reviews of application for CON and issuance, denial, or withdrawal of certificates. The criteria

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<sup>6</sup> R.C. 5119.399(B).

<sup>7</sup> R.C. 5119.399(B)(5).

<sup>8</sup> R.C. 5119.3910.

<sup>9</sup> R.C. 5119.3911.

must include a formula for determining each county's need for recovery housing residences and may include other formulas for determining that need.<sup>10</sup>

Other criteria must relate to the need of the reviewable activity and pertain to all of the following:<sup>11</sup>

- The impact of the reviewable activity on the cost and quality of recovery housing in the relevant service area;
- The quality of the services to be provided as a result of the activity;
- The impact of the reviewable activity on the availability and accessibility of the type of services proposed and the level of access to the services proposed;
- The activity's short-term and long-term financial feasibility and cost-effectiveness, the impact of the activity on the applicant's costs and charges, and a comparison of the cost and charges with those of providers of similar services in the proposed service area;
- The advantages, disadvantages, and costs of alternatives to the reviewable activity;
- The impact of the activity on all other providers of similar services in the relevant service area;
- The historical performance of the applicant and related or affiliated parties in complying with previously granted CONs;
- The historical performance of the applicant in providing cost-effective recovery housing;
- The special needs and circumstances of the applicant or the population proposed to be served by the project; and
- The appropriateness of the zoning status of the proposed site.

## **Rules on procedural matters**

The OhioMHAS Director must also adopt rules regarding a timeframe for issuing rulings; granting or denying CON applications; application fees for projects that are not bed-based; information required to be part of an application; a process for revising a pending application; a timeframe to start the project after a CON has been approved; when a CON can be withdrawn, expires, or becomes void; civil penalties; timeframes and requirements for notices of appeal; and any other rules the Director considers necessary.<sup>12</sup>

## **Appeals of CON decisions**

Appeals regarding CON decisions may be submitted to the OhioMHAS Director by the following: (1) an applicant for a CON regarding the Director's decision to grant or deny a CON

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<sup>10</sup> R.C. 5119.3913(A)(2).

<sup>11</sup> R.C. 5119.3913(A)(1).

<sup>12</sup> R.C. 5119.3913(B).

application, (2) a person that requested a reviewability ruling, which could be someone other than a CON applicant, (3) the holder of a CON regarding a decision to withdraw the CON or declare it void, or (4) any person found to have violated the bill's prohibition against carrying out a reviewable activity without the required CON, regarding that finding or the civil penalties imposed for the violation.<sup>13</sup>

The OhioMHAS Director must provide an adjudication hearing for an appeal submitted to the Director. The Director's decision in that hearing may be appealed to the Tenth District Court of Appeals by the CON applicant or other person that was a party to the hearing.<sup>14</sup>

## **Civil penalties for violating prohibitions**

The bill prohibits anyone from carrying out a reviewable activity unless a CON has been granted. The bill also prohibits someone from carrying out a reviewable activity if a CON authorizing that activity has been withdrawn, is expired, or is void. If a CON is granted, the CON holder is prohibited from carrying out the reviewable activity in a way that is not in substantial accordance with the approved CON.<sup>15</sup>

The OhioMHAS Director must evaluate and may investigate evidence that seems to show that a person has violated the bill's prohibitions. If the Director does conduct an investigation, the Director is required to mail a notice, by certified mail, to the alleged violator that an investigation is occurring. Every investigation must be conducted in a manner that protects resident confidentiality.<sup>16</sup>

The OhioMHAS Director must impose a civil penalty on violators of the bill's prohibitions against unauthorized CON activities. The amount of the penalty is to be established by the Director in rules adopted under the bill.<sup>17</sup>

## **INSPECTIONS AND INVESTIGATIONS BY ADAMH BOARDS**

### **Inspections**

The bill requires each recovery housing residence to be inspected annually by the board of alcohol, drug addiction, and mental health services (ADAMH board) that has jurisdiction over the area where the residence is located. Not more than ten days after completing the inspection, the ADAMH board must report its findings to OhioMHAS.<sup>18</sup>

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<sup>13</sup> R.C. 5119.3914(A).

<sup>14</sup> R.C. 5119.3914(B).

<sup>15</sup> R.C. 5119.3912(A).

<sup>16</sup> R.C. 5119.3912(B).

<sup>17</sup> R.C. 5119.3912(C) and 5119.3913(B)(8).

<sup>18</sup> R.C. 5119.393(A).

## Complaint investigations

The bill requires that complaints be investigated by the ADAMH board with jurisdiction over the area where the residence is located. The ADAMH board may contract with individuals to serve as inspectors and investigators. These provisions for ADAMH board investigations replace the existing duty of OhioMHAS to investigate the complaints or to contract with a private organization that accredits recovery housing residences to conduct the investigations. As currently is the case with any OhioMHAS contractor, the bill requires the ADAMH board to report the status of investigations, including the outcome, at least monthly.<sup>19</sup>

## Funds for expenses

The bill creates the Recovery Housing Residence Fund in the state treasury that consists of CON application fees and civil penalties. ADAMH boards may use the fund to assist with costs incurred in conducting inspections and complaint investigations.<sup>20</sup>

## Reports from accreditation organizations

If OhioMHAS implements its existing authority to monitor recovery housing residences by contracting with private accreditation organizations, in lieu of certifying the residences itself, the bill requires those organizations to report to OhioMHAS if they make adverse decisions based on the outcome of an ADAMH board's inspection or complaint investigation. The organization must make the report as soon as possible, but no later ten days after making the adverse decision.<sup>21</sup>

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## HISTORY

Action	Date
Introduced	02-04-25

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ANHB0058IN-136/ts

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<sup>19</sup> R.C. 5119.393(B).

<sup>20</sup> R.C. 5119.3915.

<sup>21</sup> R.C. 5119.393(D).