Ohio Administrative Code

Rule 3701-12-23 Long-term care facilities and beds and bed review criteria; state and county bed need.

Effective: December 11, 2022

(A) Except as otherwise specifically provided in this rule or in another rule of this chapter, the director shall apply all of the criteria prescribed by this rule when reviewing an application for a certificate of need that relates to an existing or proposed long-term care facility, including an application for:

(1) The establishment, development, or construction of a new long-term care facility;

(2) The replacement of an existing long-term care facility.

(3) The renovation of or addition to a long-term care facility that involves a capital expenditure of four million dollars or more, not including expenditures for equipment, staffing, or operational costs;

(4) An increase in long-term care bed capacity;

(5) A relocation of long-term care beds from one physical facility or site to another, excluding relocation of beds within a long-term care facility or among buildings of a long-term care facility at the same site;

(6) The expenditure of more than one hundred ten per cent of the maximum expenditure specified in a certificate of need concerning long-term care beds.

(B) Contiguous county relocations. Applications for certificate of need that propose an increase in beds that is attributable to a relocation of existing beds from an existing long-term care facility as defined in division (A) of section 3702.594 of the Revised Code to another existing long-term care facility located within a county that is contiguous to the county from which the beds are to be relocated that meet all of the following conditions may be submitted at any time:

(1) Not more than a total of thirty long-term care facility beds are proposed for relocation to the same

existing long-term care facility regardless of the number of applications filed. Once the cumulative total of beds relocated under section 3702.594 of the Revised Code to a long-term care facility reaches thirty, no further applications under this paragraph will be accepted until a period of five years has elapsed since the implementation of the most recent reviewable activity implemented under section 3702.594 of the Revised Code has expired; and

(2) After the proposed relocation, there will be existing nursing home long-term care facility beds remaining in the county from which the beds are relocated.

(C) The director shall not grant a certificate of need under this rule unless the application contains documentation that the project will comply with the following requirements as applicable:

(1) For homes required to be licensed under Chapter 3721. of the Revised Code, the requirements for licensure under Chapter 3721. of the Revised Code and Chapter 3701-17 of the Administrative Code;

(2) For hospital long-term care beds, beds in county homes as defined in section 5155.31 of the Revised Code that are long-term care facilities as defined in this chapter, and long-term care beds in a long-term care facility, the requirements for certification as a nursing facility or skilled nursing facility under Title XVIII or XIX of the Social Security Act. 49 Stat. 620 (1935), 42 U.S.C. 301, as amended (1981).

(D) The director shall consider the long-term care bed capacity of proposed projects for the establishment, construction, or development of new long-term care facilities, including replacement facilities. The director may consider the following criteria:

(1) Whether the proposed facility's size is essential to serve a special health care need that otherwise will not be served, or will serve a special health care need in accordance with current, evidence-based standards of care;

(2) Whether the proposed facility is the only feasible alternative for cost-effective correction of physical plant deficiencies; or

(3) Whether the proposed facility is part of a continuing care retirement or life care community and

the application demonstrates the following:

(a) The applicant will be contractually obligated to provide long-term care to current residents of the continuing care retirement or life care community; and

(b) The continuing care retirement or life care community currently provides and will continue to provide preference in admission to contractual residents of the community.

(E) In reviewing a certificate of need application under this rule, the director may examine and consider, in accordance with this paragraph, any state or federal records relating to the licensure under Chapter 3721. of the Revised Code or, if applicable, the participation as a provider under Title XVIII or XIX of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C. 301, as amended (1981), of any long-term care facilities owned, operated, or managed by the applicant, the owner or the operator of the long-term care facility to which the application relates, or by any principal participant, as defined in paragraph (V) of rule 3701-12-01 of the Administrative Code, in an entity which is or will be the applicant, owner, or operator. The application shall contain a list of all relevant long-term care facilities with dates of ownership, operation, or management. The director also may consider records pertaining to ownership or operation by these persons of long-term care facilities in other states.

(1) The director shall deny the certificate of need if the provisions of division (B) of section 3702.59 of the Revised Code apply to an application for the addition of long-term care beds to an existing long-term care facility or an application for the development of a new long-term care facility.

(2) The director also may deny the certificate of need if the applicant, owner, operator, or any principal participant has been the subject of a final determination of medicare or medicaid fraud or abuse.

(F) Comparative review applications. In determining which applications should receive preference in a comparative review process, the director shall consider, in conjunction with all other applicable criteria prescribed by this chapter, all of the following as weighted priorities. Applications that meet all applicable criteria for certificate of need approval and that receive the most points under this paragraph will be given preference. When applications that meet all applicable criteria for certificate of need approval and that are under a comparative review process for the same county receive an

equal number of points under this paragraph, the director shall give preference to the application that demonstrates the greatest need for the reviewable activity. The director may approve all or part of a proposed activity.

(1) Whether the project, as described in the application, is or will be part of a continuing care retirement community (CCRC) that complies with paragraph (J)(3) of this rule upon completion of the reviewable activity. This criterion is weighted with four points for a CCRC with at least a four to one ratio of alternative beds to long-term care beds, three points with at least a three to one ratio, two points with at least a two to one ratio and one point with at least a one to one ratio. No points will be given if the ratio is less than one to one.

(a) The alternative beds shall be available to the residents and potential residents of the long-term care facility.

(b) Appropriate agreements shall exist between the long-term care facility and the alternative facility for transfer of residents.

(c) The applicant shall certify that the capital expenditure for the proposed alternative facility will be obligated, within the meaning of paragraph (A)(1)(b) of rule 3701-12-18 of the Administrative Code, at the same time as the capital expenditure for the portion of the project involving the long-term care facility.

(d) The applicant shall certify that no application will be filed by any person for a certificate of need for conversion of the alternative beds to long-term care beds for at least two years after the proposed alternative beds are occupied by residents.

(e) The application shall contain a certification that if for any reason the alternatives to inpatient long-term care cannot be developed or provided, development of the portion of the project involving the long-term care facility will be discontinued and the director will be notified immediately.

(f) The application shall contain documentation of how the long-term care facility and the alternative beds proposed will be integrated into the existing and projected community system for caring for elderly and individuals with disabilities. This documentation shall include at least:

(i) A thorough inventory of existing and projected alternative beds to inpatient long-term care within the county;

(ii) A description of the planning process leading to selection of the alternative beds proposed in the application, including discussions with appropriate community groups such as local aging agencies regarding the community's needs for alternative services; and

(iii) An analysis of the need in the community for the proposed alternative beds, taking into account the needs of the target population, the existing and projected alternative services and beds in the community, the ability of the target population to assume the cost for an alternative bed, and the expected effect of the alternative beds on utilization of long-term care facilities. The application also shall contain a demonstration of the economic viability of the proposed alternative beds.

(2) Whether the beds will serve a medically underserved population such as low-income individuals, individuals with disabilities, or individuals who are members of racial or ethnic minority groups.

(a) If the project in which the beds will be included will serve low-income individuals or individuals who are members of racial or ethnic minority groups, this criterion is weighted with one point for each medically underserved population to be served by the project that is documented as being greater than or equal to twenty-five per cent of the population of the defined service area.

(b) If the project in which the beds will be included will primarily serve individuals with special health care needs such as traumatic or acquired brain injury, cerebral palsy, spinal cord injury or disability, multiple sclerosis, acquired immune deficiency syndrome or other similar conditions. This criterion is weighted three points.

(3) Whether the project in which the beds will be included will provide alternatives to institutional care, such as adult day-care, home health care, respite or hospice care, mobile meals, residential care, independent living, or congregate living services. This criterion is weighted with two points.

(4) Whether the long-term care facility's owner or operator will participate in medicaid waiver programs for alternatives to institutional care. This criterion is weighted with two points.

(5) Whether the project in which the beds will be included will reduce alternatives to institutional care by converting residential care beds or other alternative care beds to long-term care beds. This criterion is weighted with negative two points.

(6) Whether the long-term care facility in which the beds will be placed has positive resident and family satisfaction surveys. This criterion is weighted with one point.

(7) Whether the long-term care facility in which the beds will be placed has fewer than fifty long-term care beds. This criterion is weighted with one point.

(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 or will be designed to accept patients for rehabilitation after an in-patient hospital stay. This criterion is weighted with two points.

(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. This criterion is weighted with one point.

(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. This criterion is weighted with one point for a four star rating and two points for a five star rating at the time the application is declared complete.

(G) Applications submitted under section 3702.593 of the Revised Code. The director shall:

(1) Limit the number of beds approved for a county to no more than the number of beds determined to be needed in the receiving county;

(2) Maintain, after the relocation, the number of beds in the source facility's service area at least equal to the state bed need rate. For purposes of this paragraph, 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;

(i) For the purpose of this rule, "fifteen mile radius" means the circular area extending fifteen and zero tenths of a mile from the facility's main entrance;

(ii) The fifteen mile radius from the facility's main entrance shall be determined utilizing global positioning system ("GPS") data.

(3) Require the operator of the long-term care facility from which beds were relocated to 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 those beds. If the beds are registered as long-term care beds under section 3701.07 of the Revised Code, the long-term care facility shall surrender the registration of these beds. In calculating the number of beds to be surrendered to the director, the number of beds shall be rounded up to the nearest whole number.

(a) This reduction shall be completed not later than the implementation date of the project for which the beds were relocated.

(b) If the director has not received evidence from the facility from which the beds are relocated, of the reduction of the required number of beds on or before the date of the completion of the project, the director shall remove those beds from the facility license, certification, or registration.

(H) When a certificate of need application is approved during the four year review process, upon completion of the project for which the certificate of need was granted a number of beds equal to the number of beds relocated shall cease to be operated in the long-term care facility from which the beds were relocated, except that the beds may continue to be operated for not more than fifteen days

to allow relocation of residents to the facility to which the beds have been relocated. Effective fifteen days after the beds are relocated:

(1) If the relocated beds are in a home licensed under Chapter 3721. of the Revised Code, the facility's license will be automatically reduced by the number of beds relocated;

(2) If the beds are in a facility that is certified as a skilled nursing facility or nursing facility under Title XVII or XIX of the "Social Security Act," the certificate shall be surrendered; or

(3) If the beds are registered under section 3701.07 of the Revised Code as long-term care beds, the director shall remove those beds from registration.

(I) For applications that propose an increase in beds that is attributable to a replacement or relocation of existing beds from an existing long-term care facility within the same county, the director shall authorize no additional beds beyond those being replaced or relocated.

(J) The director shall utilize the following formula when determining the number of long-term care beds needed for each county for the review process prescribed in division (B) of section 3702.593 of the Revised Code:

(1) State bed need rate calculation:

Total statewide inpatient days ÷ total bed days available of these facilities = statewide long-term care bed occupancy rate

Statewide long-term care bed occupancy rate x total statewide long-term care bed supply = total statewide number of beds occupied

Total statewide number of beds occupied ÷ ninety per cent = total statewide number of beds needed

Total statewide number of beds needed ÷ projected statewide population aged sixty-five and older) x one thousand = state bed need rate

For purposes of this rule:

Total statewide inpatient days means: the sum of inpatient days for all facilities identified by facility type as "Nursing Facility" that filed a medicaid cost report for the calendar year that is two years prior to the year in which a bed need is published for the first review process and the first phase of a four year review process.

Total bed days available of these facilities means: the sum of the long-term care bed capacity for each nursing facility that is multiplied by the number of calendar days in the reporting year. The reporting year for each facility will include only the number of calendar days that the facility was authorized to provide care and was providing services.

Total statewide long-term care bed supply means: utilize the most recent long-term care bed supply per county that is determined by the director. The long-term care bed supply per county shall include all of the following:

(a) Licensed nursing home beds;

(b) Beds certified as nursing facility or skilled nursing facility under Title XVIII or XIX of the Social Security Act. 49 Stat. 620 (1935), 42 U.S.C. 301, as amended (1981);

(c) Beds in any portion of a hospital that are properly registered under section 3701.07 of the Revised Code as long-term care beds, excepting beds recategorized pursuant to section 3702.521 of the Revised Code;

(d) Beds in a county home or county nursing home as defined in section 5155.31 of the Revised Code that were timely and properly reported as long-term care beds pursuant to section 5155.38 of the Revised Code; and

(e) Beds held as "approved" beds under an approved certificate of need.

Projected statewide population aged sixty-five and over means: based on the Ohio department of development's projections for the year that is at least five years after the year in which a bed need is

published for the four year review process.

(2) County bed need calculation;

Projected county population aged sixty-five and older ÷ one thousand) x state bed need rate = number of beds needed for the county

Number of beds needed for the county - bed supply for the county = bed need or excess for the county

For purposes of this rule:

Projected county population aged sixty-five and older means: the projections for each county that were used in determining the projected statewide population aged sixty-five and over.

Bed supply for the county means: the bed supply for each county that was used in determining the total statewide long-term care bed supply.

(K) If the formula projects a bed need for a county with an average annual occupancy rate of less than eighty-five per cent, the director shall find that there is no bed need.

(L) If the formula projects a bed excess for a county with an average annual occupancy rate of greater than ninety per cent, the director may approve an increase in beds equal to up to ten per cent of the long-term care bed supply for that county.

(M) Except as provided in paragraph (L) of this rule, if the formula projects a bed excess of one hundred beds or less for a county, the director shall find that there is no excess or, if the formula projects a bed excess of more than one hundred beds, the director shall find that there is a bed excess for the projected number of beds less one hundred.

(N) Not later than October 1, 2023 and every four years thereafter, the director shall publish on the department of health's website the following:

(1) Each county with a bed need and the number of beds needed for the county; and

(2) Each county with a bed excess and the number of excess beds for the county.