



**Christine
Kenney**
Director of
Regulatory
Services,
INCompliance

Columbus
614.227.4865
ckenney@bricker.com

Ohio budget bill provides significant changes to Certificate of Need laws

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On July 18, 2019, Governor Mike DeWine signed Ohio's general operating budget for state fiscal years 2020-21. Provisions within this bill make a number of substantive changes to the Certificate of Need (CON) laws. Most of these CON provisions take effect on October 17, 2019. These substantive changes are outlined below.

Moratorium on CON applications: The provisions place a moratorium on the acceptance of many, but not all, CON applications beginning with the effective date of the bill and ending July 1, 2021 (the end of the budget biennium; note that the next budget bill could extend this moratorium). The Ohio Department of Health (ODH) may only accept CON applications for (1) the comparative review process, (2) contiguous county bed relocations, (3) replacement of an existing long-term care facility if the new facility will have the same owner and operator and the county in which the facility is being replaced has a bed need under the 2016 bed need determination, or (4) renovation of or addition to an existing long-term care facility if the facility is in a county with a bed need under the 2016 bed need determination. Accordingly, for a county without a bed need under the 2016 bed need determination, this will prohibit ODH from accepting a CON application for an intra-county bed relocation (either the addition of beds to an existing facility or development of a new facility with intra-county beds) or a replacement or renovation

of an existing long-term care facility. An application for a contiguous county bed relocation to a county without a bed need may still be accepted.

Completeness process: The provisions provide for the director to declare an application complete within 180 days after the date the CON application is filed. This change does NOT take effect on October 17, 2019. Rather, ODH is required to develop rules to implement this change; until final rules are effective, the current process and time frame for completeness remain in place. When finalized, this change will likely cause ODH to shorten the 90-day time frame that the applicant currently has to respond to a request for additional information.

Appeal of CON decisions: Perhaps the most significant change is that interested third parties have lost the right to appeal CON and reviewability ruling decisions. The budget bill provisions provide that only the applicant for a CON may appeal the director's decision. An affected person may still submit written comments on CON applications during the review process, but that is their only recourse or remedy.

Comparative review process: The provisions move the next comparative review period sooner to January 1, 2020, through December 31, 2023, and every four years thereafter. The next review period was previously scheduled to begin on July 1, 2020. This change requires ODH to perform a new determination of each county's bed supply and bed need or excess and publish the results on the web site by October 1 beginning in 2023 (and every four years thereafter). For the comparative review process beginning January 1, 2020, the director will use the 2016 bed supply and bed need for each county, and ODH will publish by October 1, 2019, and accept applications in January 2020. Comparative review applications will be accepted in January, and applications will be reviewed through September 30. The previously-provided second phase (or redistribution of surrendered beds) of the comparative review process is eliminated.

County-Specific Exceptions to the 2020 comparative review process: For Delaware, Greene, Lake, Licking and Median Counties, the director (1) will not apply the county's average occupancy information to determine bed need, (2) will refuse to accept an application, except for Green County, unless the applicant is already an owner or operator of a skilled nursing facility in the receiving county, (3) will refuse to accept an application if the source facility has a 4- or 5-star rating, unless the facility is voluntarily closing, (4) will not require that the number of beds remaining in the source facility's service area after relocation be at least equal to the state bed need rate and (5) will not apply the criteria that require comparative review of two or more applications if the applications request beds from the same service area, and the number of beds that would remain in the source service area will be less than the state bed need rate. The five exception counties are limited to the following increase in beds:

Delaware County - 200 beds

Greene County - 99 beds
Lake County - 200 beds
Licking County - 185 beds
Medina County - 200 beds