

**As Introduced**

**124th General Assembly  
Regular Session  
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**H. B. No. 637**

**REPRESENTATIVES R. Miller, Barrett, Sykes**

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**A B I L L**

To amend sections 3702.51 and 3702.511 of the Revised Code to restore the requirement of a certificate of need for the establishment of a new hospital or certain other health-related activities.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3702.51 and 3702.511 of the Revised Code be amended to read as follows:

**Sec. 3702.51.** As used in sections 3702.51 to 3702.62 of the Revised Code:

(A) "Applicant" means any person that submits an application for a certificate of need and who is designated in the application as the applicant.

(B) "Person" means any individual, corporation, business trust, estate, firm, partnership, association, joint stock company, insurance company, government unit, or other entity.

(C) "Certificate of need" means a written approval granted by the director of health to an applicant to authorize conducting a reviewable activity.

(D) "Health service area" means a geographic region designated by the director of health under section 3702.58 of the

Revised Code. 20

(E) "Health service" means a clinically related service, such 21  
as a diagnostic, treatment, rehabilitative, or preventive service. 22

(F) "Health service agency" means an agency designated to 23  
serve a health service area in accordance with section 3702.58 of 24  
the Revised Code. 25

(G) "Health care facility" means: 26

(1) A hospital registered under section 3701.07 of the 27  
Revised Code; 28

(2) A nursing home licensed under section 3721.02 of the 29  
Revised Code, or by a political subdivision certified under 30  
section 3721.09 of the Revised Code; 31

(3) A county home or a county nursing home as defined in 32  
section 5155.31 of the Revised Code that is certified under Title 33  
XVIII or XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 34  
U.S.C.A. 301, as amended; 35

(4) A freestanding dialysis center; 36

(5) A freestanding inpatient rehabilitation facility; 37

(6) An ambulatory surgical facility; 38

(7) A freestanding cardiac catheterization facility; 39

(8) A freestanding birthing center; 40

(9) A freestanding or mobile diagnostic imaging center; 41

(10) A freestanding radiation therapy center. 42

A health care facility does not include the offices of 43  
private physicians and dentists whether for individual or group 44  
practice, residential facilities licensed under section 5123.19 of 45  
the Revised Code, or habilitation centers certified by the 46  
director of mental retardation and developmental disabilities 47

under section 5123.041 of the Revised Code, or an institution for  
the sick that is operated exclusively for patients who use  
spiritual means for healing and for whom the acceptance of medical  
care is inconsistent with their religious beliefs, accredited by a  
national accrediting organization, exempt from federal income  
taxation under section 501 of the Internal Revenue Code of 1986,  
100 Stat. 2085, 26 U.S.C.A. 1, as amended, and providing  
twenty-four hour nursing care pursuant to the exemption in  
division (E) of section 4723.32 of the Revised Code from the  
licensing requirements of Chapter 4723. of the Revised Code.

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(H) "Medical equipment" means a single unit of medical  
equipment or a single system of components with related functions  
that is used to provide health services.

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(I) "Third-party payer" means a health insuring corporation  
licensed under Chapter 1751. of the Revised Code, a health  
maintenance organization as defined in division (K) of this  
section, an insurance company that issues sickness and accident  
insurance in conformity with Chapter 3923. of the Revised Code, a  
state-financed health insurance program under Chapter 3701.,  
4123., or 5111. of the Revised Code, or any self-insurance plan.

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(J) "Government unit" means the state and any county,  
municipal corporation, township, or other political subdivision of  
the state, or any department, division, board, or other agency of  
the state or a political subdivision.

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(K) "Health maintenance organization" means a public or  
private organization organized under the law of any state that is  
qualified under section 1310(d) of Title XIII of the "Public  
Health Service Act," 87 Stat. 931 (1973), 42 U.S.C. 300e-9.

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(L) "Existing health care facility" means a health care  
facility that is licensed or otherwise approved to practice in  
this state, in accordance with applicable law, is staffed and

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equipped to provide health care services, and actively provides  
health services or has not been actively providing health services  
for less than twelve consecutive months.

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(M) "State" means the state of Ohio, including, but not  
limited to, the general assembly, the supreme court, the offices  
of all elected state officers, and all departments, boards,  
offices, commissions, agencies, institutions, and other  
instrumentalities of the state of Ohio. "State" does not include  
political subdivisions.

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(N) "Political subdivision" means a municipal corporation,  
township, county, school district, and all other bodies corporate  
and politic responsible for governmental activities only in  
geographic areas smaller than that of the state to which the  
sovereign immunity of the state attaches.

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(O) "Affected person" means:

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(1) An applicant for a certificate of need, including an  
applicant whose application was reviewed comparatively with the  
application in question;

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(2) The person that requested the reviewability ruling in  
question;

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(3) Any person that resides or regularly uses health care  
facilities within the geographic area served or to be served by  
the health care services that would be provided under the  
certificate of need or reviewability ruling in question;

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(4) Any health care facility that is located in the health  
service area where the health care services would be provided  
under the certificate of need or reviewability ruling in question;

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(5) Third-party payers that reimburse health care facilities  
for services in the health service area where the health care  
services would be provided under the certificate of need or

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reviewability ruling in question;	109
(6) Any other person who testified at a public hearing held under division (B) of section 3702.52 of the Revised Code or submitted written comments in the course of review of the certificate of need application in question.	110 111 112 113
(P) "Osteopathic hospital" means a hospital registered under section 3701.07 of the Revised Code that advocates osteopathic principles and the practice and perpetuation of osteopathic medicine by doing any of the following:	114 115 116 117
(1) Maintaining a department or service of osteopathic medicine or a committee on the utilization of osteopathic principles and methods, under the supervision of an osteopathic physician;	118 119 120 121
(2) Maintaining an active medical staff, the majority of which is comprised of osteopathic physicians;	122 123
(3) Maintaining a medical staff executive committee that has osteopathic physicians as a majority of its members.	124 125
(Q) "Ambulatory surgical facility" has the same meaning as in section 3702.30 of the Revised Code.	126 127
(R) Except as otherwise provided in division (T) of this section, <del>and until the termination date specified</del> in section 3702.511 of the Revised Code, "reviewable activity" means any of the following:	128 129 130 131
(1) The addition by any person of any of the following health services, regardless of the amount of operating costs or capital expenditures:	132 133 134
(a) A heart, heart-lung, lung, liver, kidney, bowel, pancreas, or bone marrow transplantation service, a stem cell harvesting and reinfusion service, or a service for transplantation of any other organ unless transplantation of the	135 136 137 138

organ is designated by public health council rule not to be a reviewable activity;	139 140
(b) A cardiac catheterization service;	141
(c) An open-heart surgery service;	142
(d) Any new, experimental medical technology that is designated by rule of the public health council.	143 144
(2) The acceptance of high-risk patients, as defined in rules adopted under section 3702.57 of the Revised Code, by any cardiac catheterization service that was initiated without a certificate of need pursuant to division (R)(3)(b) of the version of this section in effect immediately prior to April 20, 1995;	145 146 147 148 149
(3)(a) The establishment, development, or construction of a new health care facility other than a new long-term care facility or a new hospital;	150 151 152
(b) The establishment, development, or construction of a new hospital or the relocation of an existing hospital;	153 154
(c) The relocation of hospital beds, other than long-term care, perinatal, or pediatric intensive care beds, into or out of a rural area.	155 156 157
(4)(a) The replacement of an existing hospital;	158
(b) The replacement of an existing hospital obstetric or newborn care unit or freestanding birthing center.	159 160
(5)(a) The renovation of a hospital that involves a capital expenditure, obligated on or after <del>the effective date of this amendment</del> <u>June 30, 1995</u> , of five million dollars or more, not including expenditures for equipment, staffing, or operational costs. For purposes of division (R)(5)(a) of this section, a capital expenditure is obligated:	161 162 163 164 165 166
(i) When a contract enforceable under Ohio law is entered	167

into for the construction, acquisition, lease, or financing of a capital asset;	168 169
(ii) When the governing body of a hospital takes formal action to commit its own funds for a construction project undertaken by the hospital as its own contractor;	170 171 172
(iii) In the case of donated property, on the date the gift is completed under applicable Ohio law.	173 174
(b) The renovation of a hospital obstetric or newborn care unit or freestanding birthing center that involves a capital expenditure of five million dollars or more, not including expenditures for equipment, staffing, or operational costs.	175 176 177 178
(6) Any change in the health care services, bed capacity, or site, or any other failure to conduct the reviewable activity in substantial accordance with the approved application for which a certificate of need was granted, if the change is made prior to the date the activity for which the certificate was issued ceases to be a reviewable activity;	179 180 181 182 183 184
(7) Any of the following changes in perinatal bed capacity or pediatric intensive care bed capacity:	185 186
(a) An increase in bed capacity;	187
(b) A change in service or service-level designation of newborn care beds or obstetric beds in a hospital or freestanding birthing center, other than a change of service that is provided within the service-level designation of newborn care or obstetric beds as registered by the department of health;	188 189 190 191 192
(c) A relocation of perinatal or pediatric intensive care beds from one physical facility or site to another, excluding the relocation of beds within a hospital or freestanding birthing center or the relocation of beds among buildings of a hospital or freestanding birthing center at the same site.	193 194 195 196 197

(8) The expenditure of more than one hundred ten per cent of the maximum expenditure specified in a certificate of need;	198 199
(9) Any transfer of a certificate of need issued prior to April 20, 1995, from the person to whom it was issued to another person before the project that constitutes a reviewable activity is completed, any agreement that contemplates the transfer of a certificate of need issued prior to that date upon completion of the project, and any transfer of the controlling interest in an entity that holds a certificate of need issued prior to that date. However, the transfer of a certificate of need issued prior to that date or agreement to transfer such a certificate of need from the person to whom the certificate of need was issued to an affiliated or related person does not constitute a reviewable transfer of a certificate of need for the purposes of this division, unless the transfer results in a change in the person that holds the ultimate controlling interest in the certificate of need.	200 201 202 203 204 205 206 207 208 209 210 211 212 213 214
(10)(a) The acquisition by any person of any of the following medical equipment, regardless of the amount of operating costs or capital expenditure:	215 216 217
(i) A cobalt radiation therapy unit;	218
(ii) A linear accelerator;	219
(iii) A gamma knife unit.	220
(b) The acquisition by any person of medical equipment with a cost of two million dollars or more. The cost of acquiring medical equipment includes the sum of the following:	221 222 223
(i) The greater of its fair market value or the cost of its lease or purchase;	224 225
(ii) The cost of installation and any other activities essential to the acquisition of the equipment and its placement	226 227



into service.	228
(11) The addition of another cardiac catheterization laboratory to an existing cardiac catheterization service.	229 230
(S) Except as provided in division (T) of this section, "reviewable activity" also means any of the following activities, none of which are subject to a termination date:	231 232 233
(1) The establishment, development, or construction of a new long-term care facility;	234 235
(2) The replacement of an existing long-term care facility;	236
(3) The renovation of a long-term care facility that involves a capital expenditure of two million dollars or more, not including expenditures for equipment, staffing, or operational costs;	237 238 239 240
(4) Any of the following changes in long-term care bed capacity:	241 242
(a) An increase in bed capacity;	243
(b) A relocation of beds from one physical facility or site to another, excluding the relocation of beds within a long-term care facility or among buildings of a long-term care facility at the same site;	244 245 246 247
(c) A recategorization of hospital beds registered under section 3701.07 of the Revised Code from another registration category to skilled nursing beds or long-term care beds.	248 249 250
(5) Any change in the health services, bed capacity, or site, or any other failure to conduct the reviewable activity in substantial accordance with the approved application for which a certificate of need concerning long-term care beds was granted, if the change is made within five years after the implementation of the reviewable activity for which the certificate was granted;	251 252 253 254 255 256

(6) The expenditure of more than one hundred ten per cent of 257  
the maximum expenditure specified in a certificate of need 258  
concerning long-term care beds; 259

(7) Any transfer of a certificate of need that concerns 260  
long-term care beds and was issued prior to April 20, 1995, from 261  
the person to whom it was issued to another person before the 262  
project that constitutes a reviewable activity is completed, any 263  
agreement that contemplates the transfer of such a certificate of 264  
need upon completion of the project, and any transfer of the 265  
controlling interest in an entity that holds such a certificate of 266  
need. However, the transfer of a certificate of need that concerns 267  
long-term care beds and was issued prior to April 20, 1995, or 268  
agreement to transfer such a certificate of need from the person 269  
to whom the certificate was issued to an affiliated or related 270  
person does not constitute a reviewable transfer of a certificate 271  
of need for purposes of this division, unless the transfer results 272  
in a change in the person that holds the ultimate controlling 273  
interest in the certificate of need. 274

(T) "Reviewable activity" does not include any of the 275  
following activities: 276

(1) Acquisition of computer hardware or software; 277

(2) Acquisition of a telephone system; 278

(3) Construction or acquisition of parking facilities; 279

(4) Correction of cited deficiencies that are in violation of 280  
federal, state, or local fire, building, or safety laws and rules 281  
and that constitute an imminent threat to public health or safety; 282  
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(5) Acquisition of an existing health care facility that does 284  
not involve a change in the number of the beds, by service, or in 285  
the number or type of health services; 286

(6) Correction of cited deficiencies identified by accreditation surveys of the joint commission on accreditation of healthcare organizations or of the American osteopathic association;	287 288 289 290
(7) Acquisition of medical equipment to replace the same or similar equipment for which a certificate of need has been issued if the replaced equipment is removed from service;	291 292 293
(8) Mergers, consolidations, or other corporate reorganizations of health care facilities that do not involve a change in the number of beds, by service, or in the number or type of health services;	294 295 296 297
(9) Construction, repair, or renovation of bathroom facilities;	298 299
(10) Construction of laundry facilities, waste disposal facilities, dietary department projects, heating and air conditioning projects, administrative offices, and portions of medical office buildings used exclusively for physician services;	300 301 302 303
(11) Acquisition of medical equipment to conduct research required by the United States food and drug administration or clinical trials sponsored by the national institute of health. Use of medical equipment that was acquired without a certificate of need under division (T)(11) of this section and for which premarket approval has been granted by the United States food and drug administration to provide services for which patients or reimbursement entities will be charged shall be a reviewable activity.	304 305 306 307 308 309 310 311 312
(12) Removal of asbestos from a health care facility.	313
Only that portion of a project that meets the requirements of division (T) of this section is not a reviewable activity.	314 315
(U) "Small rural hospital" means a hospital that is located	316

within a rural area, has fewer than one hundred beds, and to which  
fewer than four thousand persons were admitted during the most  
recent calendar year.

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(V) "Children's hospital" means any of the following:

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(1) A hospital registered under section 3701.07 of the  
Revised Code that provides general pediatric medical and surgical  
care, and in which at least seventy-five per cent of annual  
inpatient discharges for the preceding two calendar years were  
individuals less than eighteen years of age;

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(2) A distinct portion of a hospital registered under section  
3701.07 of the Revised Code that provides general pediatric  
medical and surgical care, has a total of at least one hundred  
fifty registered pediatric special care and pediatric acute care  
beds, and in which at least seventy-five per cent of annual  
inpatient discharges for the preceding two calendar years were  
individuals less than eighteen years of age;

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(3) A distinct portion of a hospital, if the hospital is  
registered under section 3701.07 of the Revised Code as a  
children's hospital and the children's hospital meets all the  
requirements of division (V)(1) of this section.

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(W) "Long-term care facility" means any of the following:

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(1) A nursing home licensed under section 3721.02 of the  
Revised Code or by a political subdivision certified under section  
3721.09 of the Revised Code;

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(2) The portion of any facility, including a county home or  
county nursing home, that is certified as a skilled nursing  
facility or a nursing facility under Title XVIII or XIX of the  
"Social Security Act";

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(3) The portion of any hospital that contains beds registered  
under section 3701.07 of the Revised Code as skilled nursing beds

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or long-term care beds. 347

(X) "Long-term care bed" means a bed in a long-term care 348  
facility. 349

(Y) "Perinatal bed" means a bed in a hospital that is 350  
registered under section 3701.07 of the Revised Code as a newborn 351  
care bed or obstetric bed, or a bed in a freestanding birthing 352  
center. 353

(Z) "Freestanding birthing center" means any facility in 354  
which deliveries routinely occur, regardless of whether the 355  
facility is located on the campus of another health care facility, 356  
and which is not licensed under Chapter 3711. of the Revised Code 357  
as a level one, two, or three maternity unit or a limited 358  
maternity unit. 359

(AA)(1) "Reviewability ruling" means a ruling issued by the 360  
director of health under division (A) of section 3702.52 of the 361  
Revised Code as to whether a particular proposed project is or is 362  
not a reviewable activity. 363

(2) "Nonreviewability ruling" means a ruling issued under 364  
that division that a particular proposed project is not a 365  
reviewable activity. 366

(BB)(1) "Metropolitan statistical area" means an area of this 367  
state designated a metropolitan statistical area or primary 368  
metropolitan statistical area in United States office of 369  
management and budget bulletin No. 93-17, June 30, 1993, and its 370  
attachments. 371

(2) "Rural area" means any area of this state not located 372  
within a metropolitan statistical area. 373

**Sec. 3702.511. Activities** To the extent provided by this 374  
section, activities specified in division (R) of section 3702.51 375  
of the Revised Code ~~shall cease to be~~ are not reviewable 376

activities ~~in accordance with this section.~~ Except as otherwise 377  
provided in division (E) of this section, all activities that were 378  
not reviewable under the version of this section that was in 379  
effect immediately prior to the effective date of this amendment 380  
are reviewable as of the effective date of this amendment. 381

(A) The activities specified in divisions (R)(1)(a) to (c), 382  
(2), (4)(b), (5)(b), (7), (10)(a), and (11) of section 3702.51 of 383  
the Revised Code ~~cease to be~~ are not reviewable activities as 384  
follows: 385

(1) Except as provided in division (A)(2) of this section, if 386  
initial rules adopted under section 3702.11 of the Revised Code 387  
take effect prior to May 1, 1997, for any service specified in 388  
that section, all activities related to that service ~~cease to be~~ 389  
are not reviewable activities during the period from one year 390  
after the effective date of the rules until the effective date of 391  
this amendment; 392

(2) If the director of health fails to file proposed initial 393  
rules in accordance with section 119.03 of the Revised Code prior 394  
to May 1, 1996, for any service specified in section 3702.11 of 395  
the Revised Code, all activities related to that service ~~cease to~~ 396  
be are not reviewable activities during the period from May 1, 397  
1997, until the effective date of this amendment; 398

(3) If initial rules for any service specified in section 399  
3702.11 of the Revised Code do not take effect prior to May 1, 400  
1997, all activities related to that service ~~cease to be~~ are not 401  
reviewable activities during the period from May 1, 1997, until 402  
the effective date of this amendment. 403

(B) The activities specified in divisions (R)(1)(d), (3)(b), 404  
(3)(c), (4)(a), (5)(a), and (10)(b) of section 3702.51 of the 405  
Revised Code ~~cease to be~~ are not reviewable activities during the 406  
period from May 1, 1997, until the effective date of this 407  
amendment. 408

(C) The activity specified in division (R)(3)(a) of section 409  
3702.51 of the Revised Code ~~ceases to be~~ is not a reviewable 410  
activity during the period from March 31, 1996, until the 411  
effective date of this amendment, if conducted within a 412  
metropolitan statistical area, and from May 1, 1997, until the 413  
effective date of this amendment, if conducted within a rural 414  
area. 415

(D) The activities specified in divisions (R)(6), (8), and 416  
(9) of section 3702.51 of the Revised Code pertain to 417  
implementation of reviewable activities for which a certificate of 418  
need has been granted. ~~When~~ During the period in which an activity 419  
described in division (R)(1), (2), (3), (4), (5), (7), (10), or 420  
(11) of that section ~~ceases to be~~ is not a reviewable activity, 421  
divisions (R)(6), (8), and (9) ~~cease to~~ do not pertain to that 422  
activity. 423

(E) An activity specified in division (R) of section 3702.51 424  
of the Revised Code that was not a reviewable activity at the time 425  
it was commenced remains not reviewable as long as it retains the 426  
character it had at the time it was commenced. For purposes of 427  
this division, an activity is deemed to have commenced on the 428  
later of the date the final governmental approval required for its 429  
implementation was obtained or the date by which at least one half 430  
of the anticipated cost of implementing the activity was 431  
obligated, as described in division (R)(5)(a) of section 3702.51 432  
of the Revised Code, contracted for, or expended. 433

**Section 2.** That existing sections 3702.51 and 3702.511 of the 434  
Revised Code are hereby repealed. 435