CS FOR HOUSE BILL NO. 187(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/7/99
Referred: Rules

Sponsor(s): HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act removing a requirement that a certificate of need is needed before
2 elimination of a category of health services provided by a health care facility;
3 prohibiting a person from converting a building or part of a building to a
4 nursing home that requires licensure unless authorized by a certificate of need;
5 setting a standard of review for applications for certificates of need relating to
6 nursing homes and nursing home beds and relating to that standard of review;
7 providing that the standard of review for applications for certificates of need
8 for beds other than nursing home beds or for a health care facility other than
9 a nursing home is the availability and quality of existing health care resources
10 or the accessibility to those resources compared to the current or projected
11 requirement for health services required to maintain the good health of citizens
12 of this state; defining the term 'nursing home bed'; eliminating statutory
references to the office of planning and research in the Department of Health and Social Services; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. FINDINGS. The legislature finds that

(1) ch. 84, SLA 1996, placed a two-year moratorium on the issuance or modification of certificates of need under AS 18.07 for nursing beds and created a working group to analyze issues relating to long-term care and the certificate of need program;

(2) it is anticipated that the long-term care system in Alaska will face a crisis in its ability to provide services to a growing and increasingly aging population by the twenty-first century unless the system can provide services in a more efficient and appropriate manner;

(3) in 1996, the state spent $120,000,000 in long-term care services for approximately 5,000 Alaskans; approximately two-thirds of these expenditures, $80,000,000, were made from the state general fund;

(4) moderate assumptions about population and inflation would project that more than $545,000,000 will be needed to pay for long-term care services in Alaska by the year 2015;

(5) a shift from the current significant reliance on costly institutional care to a more balanced continuum of home-based and community-based services is needed;

(6) a two-year moratorium on the issuance or modification of a certificate of need for the addition of nursing home beds was enacted into law in 1996 to

(A) encourage the development of home-based and community-based services;

(B) direct the state's resources toward the services that can best meet the needs of the clients; and

(C) facilitate actions to provide a more balanced system of care and more appropriate placement of clients, enlarge client choice, and avoid unnecessary new long-term care costs;

(7) appropriate planning is necessary to ensure that a certificate of need for new or replacement nursing home beds is not approved without a
(A) demonstrated long-term need for those beds on a regional basis;
(B) demonstration that the project is financially feasible and fosters the least reliance on the state general fund for provision of the most appropriate service;
(C) demonstration of public participation in the planning process and support by affected groups; and
(D) showing that the approval or modification of the certificate of need is consistent with existing state plans for delivery of care in Alaska; and
(8) this Act provides a minimum framework to ensure that the approval of new or replacement nursing home beds enhances access to the appropriate level of care to meet the needs of Alaskans and does not foster reliance on the state general fund to finance the operating and capital costs.

* Sec. 2. AS 18.07.021 is amended to read:

Sec. 18.07.021. Administration [OFFICE OF PLANNING AND RESEARCH]. The [OFFICE OF PLANNING AND RESEARCH IN THE] department shall administer the certificate of need program under this chapter and perform other functions prescribed in this chapter.

* Sec. 3. AS 18.07.031 is amended to read:

Sec. 18.07.031. Certificate of need required. (a) A person may not make an expenditure of $1,000,000 or more for any of the following unless authorized under the terms of a certificate of need issued by the department [OFFICE]:

(1) construction of a health care facility;
(2) alteration of the bed capacity of a health care facility; or
(3) addition [OR ELIMINATION] of a category of health services provided by a health care facility.

(b) Notwithstanding the expenditure threshold in (a) of this section, a person may not convert a building or part of a building [THAT IS LICENSED AS AN ASSISTED LIVING FACILITY UNDER AS 47.33] to a nursing home that requires licensure under AS 18.20.020 unless authorized under the terms of a certificate of need issued by the department [OFFICE].

* Sec. 4. AS 18.07.041 is amended to read:

Sec. 18.07.041. Standard of review for applications for certificates of need
relating to non-nursing home beds and services. The department [OFFICE] shall
grant a sponsor a certificate of need or modify a certificate of need that authorizes
beds other than nursing home beds or that is for a health care facility other than
a nursing home if the availability and quality of existing health care resources or the
accessibility to those resources is less than the current or projected requirement for
health services required to maintain the good health of citizens of this state.

* Sec. 5. AS 18.07 is amended by adding a new section to read:

Sec. 18.07.043. Standard of review for applications for certificates of need
relating to nursing homes and nursing home beds. (a) The department shall
develop review standards for an application for a certificate of need, or for a
modification of a certificate of need, issued under this chapter for a health care facility
that is a nursing home or has nursing home beds.

(b) In developing the review standards under (a) of this section, the department
shall consider whether

(1) a public process and existing appropriate statewide, regional, and
local plans were included in planning and designing the additional nursing home beds
or the health care facility;

(2) the additional nursing home beds or the health care facility meets
minimum required use rates for new nursing beds, and the effect on use rates for
existing nursing home beds;

(3) the additional nursing home beds or the health care facility
demonstrates consideration of the community, regional, and statewide needs for new
nursing home beds;

(4) the additional nursing home beds or the health care facility meets
the minimum number of new nursing beds that should be required in a facility to
ensure efficiency and economies of scale;

(5) the additional nursing home beds or the health care facility
demonstrates the proposed service will provide a quality of care equivalent to existing
community, regional, or statewide services;

(6) the additional nursing home beds or the health care facility
demonstrates financial feasibility, including long-term viability, and what the financial
effect will be on consumers and the state; and

(7) the sponsor has demonstrated cost effectiveness through considering the availability of appropriate, less costly alternatives of providing the services planned.

(c) The department shall grant a sponsor a certificate of need or modify a certificate of need that authorizes nursing home beds or that is for a health care facility that is a nursing home if the department finds that the sponsor meets the standards established in or under this chapter.

* Sec. 6. AS 18.07.061 is amended to read:

Sec. 18.07.061. Modification and termination of activities. The certificate holder shall apply to the department [OFFICE] for a modification of the certificate before terminating part of the activities authorized by the terms of issuance, but the certificate holder is not required to obtain the acquiescence of the department [OFFICE] before terminating all the activities authorized by the certificate. If a certificate holder terminates all of the activities authorized by a certificate, the certificate holder is required to notify the department [OFFICE] 60 days before termination and to surrender the certificate to the department [OFFICE] within 30 days of termination.

* Sec. 7. AS 18.07.071 is amended to read:

Sec. 18.07.071. Temporary and emergency certificates. (a) The department [OFFICE] shall grant a sponsor an emergency certificate for the construction of a health care facility for which a certificate is required under AS 18.07.031 if the sponsor shows, by affidavit or formal hearing, that the act of construction consists of effecting emergency repairs.

(b) The department [OFFICE] may grant a sponsor a temporary certificate for the temporary operation of a category of health service [,] if the sponsor shows by affidavit or formal hearing

(1) the necessity for early, immediate, or temporary relief; [,]
(2) adverse effect to the public interest by reason of delay occasioned by compliance with the requirements of AS 18.07.041, 18.07.043, and application procedures prescribed by regulations under this chapter.
(c) A temporary certificate granted under (b) of this section does not confer vested rights on behalf of the applicant. The **department** [OFFICE] shall impose those special limitations and restrictions concerning duration and right of extension that the **department** [OFFICE] considers appropriate. A temporary certificate may not be granted for a period longer than necessary for the sponsor to obtain review of the action certified by the temporary certificate under AS 18.07.051. Application for a certificate of need under AS 18.07.041 or **18.07.043** must commence within 60 days of the date of issuance of the temporary certificate.

*Sec. 8.* AS 18.07.081(a) is amended to read:

(a) The **department** [OFFICE], a member of the public who is substantially affected by activities authorized by the certificate, or another applicant for a certificate of need may initiate a hearing to obtain modification, suspension, or revocation of an existing certificate of need by filing an accusation with the commissioner as prescribed under AS 44.62.360. A revocation, modification, or suspension of an outstanding certificate may not be undertaken unless it is in accordance with AS 44.62.330 - 44.62.630.

*Sec. 9.* AS 18.07.081(c) is amended to read:

(c) A certificate of need shall be suspended if an accusation is filed before the commencement of activities authorized under AS 18.07.041 or **18.07.043** that charges that factors upon which the certificate of need was issued have changed [,] or new factors have been discovered that significantly alter the need for the activity authorized. A suspension of a certificate may not exceed 60 days. At the end of this period or sooner, the **department** [OFFICE] shall revoke or reinstate the certificate.

*Sec. 10.* AS 18.07.081(d) is amended to read:

(d) A certificate of need may be revoked if

(1) the sponsor has not shown continuing progress toward commencement of the activities authorized under AS 18.07.041 or **18.07.043** after six months of issuance;

(2) the applicant fails, without good cause, to complete activities authorized by the certificate;

(3) the sponsor fails to comply with the provisions of this chapter or
regulations adopted under this chapter;

(4) the sponsor knowingly misrepresents a material fact in obtaining the certificate;

(5) the facts charged in an accusation filed under (c) of this section are established; or

(6) the sponsor fails to provide services authorized by the terms of the certificate.

* Sec. 11. AS 18.07.101 is amended to read:

Sec. 18.07.101. Regulations. The commissioner shall adopt, in accordance with AS 44.62 (Administrative Procedure Act), regulations that establish procedures under which sponsors may make application for certificates of need required by this chapter and that govern the review of those applications by the department [OFFICE], establish requirements for a uniform statewide system of reporting financial and other operating data, and otherwise carry out the purposes of this chapter.

* Sec. 12. AS 18.07.111(2) is amended to read:

(2) "certificate" means a certificate of need issued by the department [OFFICE] under AS 18.07.041, 18.07.043, or 18.07.071 [AS 18.07.071];

* Sec. 13. AS 18.07.111 is amended by adding a new paragraph to read:

(13) "nursing home bed" means a bed not used for acute care in which nursing care and related medical services are provided over a period of 24 hours a day to individuals admitted to the health care facility because of illness, disease, or physical infirmity.

* Sec. 14. AS 18.07.111(11) is repealed.

* Sec. 15. TRANSITION. (a) A matter described in former AS 18.07.031 that is authorized under a certificate of need issued before the effective date of this Act shall be reviewed and completed in accordance with the applicable statutes and regulations as they existed on the day before the effective date of this Act.

(b) Except as provided in (a) of this section, pending applications and any other matters described in former AS 18.07.031 or in AS 18.07.031, as amended by this Act, shall be reviewed and completed in accordance with the provisions of this Act.

* Sec. 16. This Act takes effect immediately under AS 01.10.070(c).