

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

1 references to the office of planning and research in the Department of Health
2 and Social Services; and providing for an effective date."

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

4 * **Section 1.** FINDINGS. The legislature finds that

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

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

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

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

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

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

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

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

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

29 (7) appropriate planning is necessary to ensure that a certificate of need for
30 new or replacement nursing home beds is not approved without a

- 1 (A) demonstrated long-term need for those beds on a regional basis;
 2 (B) demonstration that the project is financially feasible and fosters the
 3 least reliance on the state general fund for provision of the most appropriate service;
 4 (C) demonstration of public participation in the planning process and
 5 support by affected groups; and
 6 (D) showing that the approval or modification of the certificate of need
 7 is consistent with existing state plans for delivery of care in Alaska; and
 8 (8) this Act provides a minimum framework to ensure that the approval of new
 9 or replacement nursing home beds enhances access to the appropriate level of care to meet
 10 the needs of Alaskans and does not foster reliance on the state general fund to finance the
 11 operating and capital costs.

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

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

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

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

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

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

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

31 **Sec. 18.07.041. Standard of review for applications for certificates of need**

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

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

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

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

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

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

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

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

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

30 (6) the additional nursing home beds or the health care facility
 31 demonstrates financial feasibility, including long-term viability, and what the financial

1 effect will be on consumers and the state; and

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

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

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

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

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

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

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

28 (1) the necessity for early, immediate, or temporary relief; [,] and
29 (2) adverse effect to the public interest by reason of delay occasioned
30 by compliance with the requirements of AS 18.07.041, 18.07.043, and application
31 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

1 regulations adopted under this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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