

SENATE BILL NO. 59

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Introduced: 2/10/99

Referred: HESS, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

**1 "An Act relating to the certificate of need program for nursing care facilities and
2 other facilities; 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;

(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

1 local plans were included in planning and designing the additional nursing home beds
2 or the health care facility;

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

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

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

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

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

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

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

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

26 **Sec. 18.07.061. Modification and termination of activities.** The certificate
27 holder shall apply to the department [OFFICE] for a modification of the certificate
28 before terminating part of the activities authorized by the terms of issuance, but the
29 certificate holder is not required to obtain the acquiescence of the department
30 [OFFICE] before terminating all the activities authorized by the certificate. If a
31 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; [,] and

(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 -

1 44.62.630.

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

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

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

10 (d) A certificate of need may be revoked if

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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