

CS FOR HOUSE BILL NO. 407(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 4/16/02
Referred: Finance

Sponsor(s): REPRESENTATIVES COGHILL, James, Scalzi, Dyson

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the certificate of need program; relating to comprehensive health**
2 **planning; and providing for an effective date."**

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

4 *** Section 1.** AS 18.07.031(a) is repealed and reenacted to read:

5 (a) Except as provided in (c) of this section, a person may not, unless
6 authorized under the terms of a certificate of need issued by the department, make an
7 expenditure of

8 (1) any amount for

9 (A) construction of a skilled nursing facility or psychiatric
10 hospital;

11 (B) an increase in the bed capacity of a skilled nursing facility
12 or psychiatric hospital;

13 (C) conversion of a building or part of a building to a skilled
14 nursing facility or psychiatric hospital;

1 (D) conversion of a bed in a health care facility to a psychiatric
2 bed designated for care of a child under 21 years of age;

3 (E) conversion of the existing use of a bed in a health care
4 facility to a new bed use other than new use as a psychiatric bed designated for
5 the care of a child under 21 years of age if the existing use required a
6 certificate of need at the time the use was established and the health care
7 facility is located in the unorganized borough or in an organized borough with
8 a population of less than 55,000 at the time of the proposed conversion,
9 according to the latest reliable data approved by the Department of Community
10 and Economic Development; or

11 (2) \$1,000,000 or more for

12 (A) addition of a category of health services provided by a
13 skilled nursing facility or a psychiatric hospital; or

14 (B) construction of a health care facility other than a skilled
15 nursing facility or psychiatric hospital, alteration of the bed capacity of a health
16 care facility other than a skilled nursing facility or psychiatric hospital, or
17 addition of a category of health services provided by a health care facility other
18 than a skilled nursing facility or psychiatric hospital, if the health care facility
19 is located in the unorganized borough or in an organized borough with a
20 population of less than 55,000 at the time of commencement of activities,
21 according to the latest reliable data approved by the Department of Community
22 and Economic Development.

23 * **Sec. 2.** AS 18.07.031(c) is amended to read:

24 (c) Notwithstanding (a) of this section, a person who is lawfully **authorized to**
25 **operate** [OPERATING] a health care facility [THAT IS AN AMBULATORY
26 SURGICAL FACILITY] at a site may make an expenditure of any amount in order to
27 **replace the facility at the same site or** relocate the services of that facility to a new
28 site in the same community without obtaining a certificate of need as long as neither
29 the bed capacity nor the number of categories of health services provided at the new
30 site **or in the new facility** is greater, **the percentage of beds designated for each**
31 **type of use at the new site or in the new facility is not different from the**

1 **percentage of beds designated for that type of use at the old site or in the previous**
 2 **facility, and no new category of health services is provided at the new site or in**
 3 **the new facility.** However, [NOTWITHSTANDING THE EXPENDITURE
 4 THRESHOLD IN (a) OF THIS SECTION,] a person may not use the site from which
 5 the health care facility relocated for another health care facility unless **the person**
 6 **complies with the** [AUTHORIZED UNDER A] certificate of need **requirements of**
 7 **(a) of this section** [ISSUED BY THE DEPARTMENT].

8 * **Sec. 3.** AS 18.07.035 is amended to read:

9 **Sec. 18.07.035. Application and fees.** Application for a certificate of need
 10 shall be made to the department upon a form provided by the department and must
 11 contain the information the department requires to reach a decision **about whether to**
 12 **issue the certificate of need** [UNDER THIS CHAPTER]. Each application for a
 13 certificate of need must be accompanied by an application fee established by the
 14 department by regulation. **The department shall, by regulation, set a time limit by**
 15 **which the department shall determine whether an application submitted under**
 16 **this section is complete and contains all of the information the department**
 17 **requires to reach a decision about whether to issue the certificate of need.**

18 * **Sec. 4.** AS 18.07 is amended by adding new sections to read:

19 **Sec. 18.07.037. Public hearing required.** Except as provided in
 20 AS 18.07.071, the department shall hold a public hearing within a reasonable time
 21 after determining that an application under AS 18.07.035 is complete. By regulation,
 22 the department shall establish

23 (1) a time limit by which a public hearing required under this section
 24 shall be held; and

25 (2) procedures for conducting a public hearing held under this section.

26 **Sec. 18.07.039. Time limit for decision on application.** Based on the
 27 standards for review under this chapter, the department shall, within 120 days after
 28 determining that an application under AS 18.07.035 is complete, approve or deny the
 29 application.

30 * **Sec. 5.** AS 18.07.043 is amended to read:

31 **Sec. 18.07.043. Standard of review for applications for certificates of need**

1 **and applications to modify certificates of need** [RELATING TO NURSING
 2 **HOMES AND NURSING HOME BEDS].** (a) The department shall develop
 3 review standards for an application for a certificate of need, or for a modification of a
 4 certificate of need, issued under this chapter [FOR A HEALTH CARE FACILITY
 5 THAT IS A NURSING HOME OR HAS NURSING HOME BEDS].

6 (b) **When determining whether to approve an application for a new**
 7 **certificate of need or to modify an existing certificate of need** [IN DEVELOPING
 8 THE REVIEW STANDARDS UNDER (a) OF THIS SECTION], the department **may**
 9 **consider community-specific health information that may be available in a**
 10 **comprehensive health plan prepared by the department under AS 47.05.010(b)**
 11 **and** shall consider whether

12 (1) a public process and existing appropriate statewide, regional, and
 13 local plans were included in planning and designing the **project** [ADDITIONAL
 14 NURSING HOME BEDS OR THE HEALTH CARE FACILITY];

15 (2) the **project will meet** [ADDITIONAL NURSING HOME BEDS
 16 OR THE HEALTH CARE FACILITY MEETS] minimum required use rates for **the**
 17 **proposed services without causing the** [NEW NURSING BEDS, AND THE
 18 EFFECT ON] use rates for existing **providers of the services to fall below minimum**
 19 **required use rates** [NURSING HOME BEDS];

20 (3) the **project** [ADDITIONAL NURSING HOME BEDS OR THE
 21 HEALTH CARE FACILITY] demonstrates consideration of the community, regional,
 22 and statewide needs [FOR NEW NURSING HOME BEDS];

23 (4) the **project** [ADDITIONAL NURSING HOME BEDS OR THE
 24 HEALTH CARE FACILITY] meets the minimum **standards of the department that**
 25 **are designed** [NUMBER OF NEW NURSING BEDS THAT SHOULD BE
 26 REQUIRED IN A FACILITY] to ensure efficiency and economies of scale;

27 (5) the **project** [ADDITIONAL NURSING HOME BEDS OR THE
 28 HEALTH CARE FACILITY] demonstrates the proposed service will provide a
 29 quality of care equivalent to existing community, regional, or statewide services;

30 (6) the **project** [ADDITIONAL NURSING HOME BEDS OR THE
 31 HEALTH CARE FACILITY] demonstrates financial feasibility, including long-term

1 viability, and what the financial effect will be on consumers and the state; and

2 (7) the sponsor has demonstrated cost effectiveness through
3 considering the availability of appropriate, less costly alternatives of providing the
4 services 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
7 FOR A HEALTH CARE FACILITY THAT IS A NURSING HOME] if the
8 department finds that the sponsor meets the standards established in or under this
9 chapter.

10 * **Sec. 6.** AS 18.07.071(b) is amended to read:

11 (b) The department may grant a sponsor a temporary certificate for the
12 temporary operation of a category of health service if the sponsor shows by affidavit
13 or formal hearing

14 (1) the necessity for early, immediate, or temporary relief; and

15 (2) adverse effect to the public interest by reason of delay occasioned
16 by compliance with the requirements of **AS 18.07.043** [AS 18.07.041, 18.07.043,] and
17 application procedures prescribed by regulations under this chapter.

18 * **Sec. 7.** AS 18.07.071(c) is amended to read:

19 (c) A temporary certificate granted under (b) of this section does not confer
20 vested rights on behalf of the applicant. The department shall impose those special
21 limitations and restrictions concerning duration and right of extension that the
22 department considers appropriate. A temporary certificate may not be granted for a
23 period longer than necessary for the sponsor to obtain review of the action certified by
24 the temporary certificate under AS 18.07.051. Application for a certificate of need
25 **that will be reviewed** under **AS 18.07.043** [AS 18.07.041 OR 18.07.043] must
26 commence within 60 days **after** [OF] the date of issuance of the temporary certificate.

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

28 (c) A certificate of need shall be suspended if an accusation is filed before the
29 commencement of activities authorized under **AS 18.07.043** [AS 18.07.041 OR
30 18.07.043] that charges that factors upon which the certificate of need was issued have
31 changed or new factors have been discovered that significantly alter the need for the

1 activity authorized. A suspension of a certificate may not exceed 60 days. At the end
2 of this period or sooner, the department shall revoke or reinstate the certificate.

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

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

5 (1) the sponsor has not shown continuing progress toward
6 commencement of the activities authorized under **AS 18.07.043 within** [AS 18.07.041
7 OR 18.07.043 AFTER] six months **after the date** of issuance **of the certificate;**

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

10 (3) the sponsor fails to comply with [THE PROVISIONS OF] this
11 chapter or regulations adopted under this chapter;

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

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

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

18 * **Sec. 10.** AS 18.07.111(2) is amended to read:

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

21 * **Sec. 11.** AS 47.05.010 is amended by adding a new subsection to read:

22 (b) The department shall develop a comprehensive health plan for the state.
23 To the maximum extent possible, the department shall compile the plan from
24 information available to the department from its data bases, from the data bases of
25 other agencies, and from local community efforts. The department shall prepare the
26 plan in a manner designed to enable the department to use community-specific health
27 information in the plan to assist the department in evaluating applications for
28 certificates of need submitted under AS 18.07 as well as for other purposes.

29 * **Sec. 12.** AS 18.07.031(b) and 18.07.041 are repealed.

30 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 COMPREHENSIVE HEALTH PLAN; LIMITATIONS. The plan required under
2 AS 47.05.010(b), enacted by sec. 11 of this Act,

3 (1) is not intended by the legislature to be updated periodically;

4 (2) shall be prepared by the Department of Health and Social Services by
5 January 1, 2003, and a copy of it shall be given by the department to the legislature by that
6 date; and

7 (3) shall be prepared by using staff and other resources of the department that
8 are generally available to perform the duties of the department without an additional
9 appropriation specifically designated for preparation of the plan or without an additional
10 appropriation to fund the indirect effect on existing personnel or resources.

11 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 APPLICABILITY. AS 18.07, as amended by secs. 1 - 10 and 12 of this Act, applies
14 to applications for certificates of need that are initially filed on or after the effective date of
15 this Act.

16 * **Sec. 15.** This Act takes effect immediately under AS 01.10.070(c).