

**CS FOR SENATE BILL NO. 256(HES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/18/02

Referred: Finance

Sponsor(s): SENATOR GREEN

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the certificate of need program; establishing a working group on the  
2 certificate of need program; establishing a temporary moratorium on the issuance of  
3 certificates of need related to certain types of psychiatric beds for children and youths;  
4 relating to children's mental health services; and providing for an effective date."

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

6 \* **Section 1.** AS 18.07.031(a) is amended to read:

7 (a) Except as provided in (c) **and (d)** of this section, a person may not,  
8 [MAKE AN EXPENDITURE OF \$1,000,000 OR MORE FOR ANY OF THE  
9 FOLLOWING] unless authorized under the terms of a certificate of need issued by the  
10 department, **make an expenditure of** [:]

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

12 **(A) construction of a health care facility that is a nursing**  
13 **home or has nursing home beds;**

14 **(B) the addition of nursing home beds to an existing health**

1 care facility;

2 (C) construction of a health care facility that includes  
 3 psychiatric beds and requires licensure under AS 18.20 as a general acute  
 4 care hospital, rural primary care hospital, critical access hospital, or  
 5 specialized hospital primarily engaged in the treatment of one specific  
 6 type of illness or disability; or

7 (D) the addition of psychiatric beds to an existing health  
 8 care facility;

9 (2) \$2,000,000 or more for construction of a health care facility not  
 10 covered under (1) of this subsection, [; (2)] alteration of the bed capacity of a health  
 11 care facility not covered under (1) of this subsection, [;] or [(3)] addition of a  
 12 category of health services provided by a health care facility, other than a category  
 13 of health services covered under (1) of this subsection, if the facility is or will be  
 14 located in the unorganized borough or in an organized borough with a  
 15 population of less than 55,000 at the time of commencement of activities,  
 16 according to the latest reliable population data approved by the Department of  
 17 Community and Economic Development; or

18 (3) \$1,000,000 or more for major medical equipment if the  
 19 equipment will be located in the unorganized borough or in an organized  
 20 borough with a population of less than 55,000, according to the latest reliable  
 21 population data approved by the Department of Community and Economic  
 22 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 operating a  
 25 health care facility [THAT IS AN AMBULATORY SURGICAL FACILITY] at a site  
 26 may make an expenditure of any amount in order to relocate the services of that  
 27 facility to a new site in the same community without obtaining a certificate of need as  
 28 long as neither the bed capacity nor the number of categories of health services  
 29 provided at the new site is greater and no new category of health services is  
 30 provided at the new site. However, notwithstanding the expenditure thresholds,  
 31 population thresholds, and other provisions of [THRESHOLD IN] (a) of this

1 section, a person may not use the site from which the health care facility relocated for  
 2 another health care facility unless authorized under a certificate of need issued by the  
 3 department.

4 \* **Sec. 3.** AS 18.07.031 is amended by adding new subsections to read:

5 (d) Notwithstanding (a) of this section, a person who is lawfully operating a  
 6 health care facility at a site may make an expenditure of any amount in order to  
 7 demolish and reconstruct a health care facility at the same site without obtaining a  
 8 certificate of need as long as neither the bed capacity nor the number of categories of  
 9 health services provided in the reconstructed facility is greater and no new category of  
 10 health services is provided in the renovated or reconstructed facility.

11 (e) When determining whether an expenditure meets or exceeds the threshold  
 12 requirements in (a) of this section, the value of studies, surveys, designs, plans,  
 13 working drawings, specifications, and other activities essential to the construction,  
 14 alteration of bed capacity, addition of service, or acquisition of the major medical  
 15 equipment, as applicable, shall be included.

16 (f) A donation or transfer of equipment or facilities to a health care facility  
 17 that, if acquired directly by the facility for fair market value, would require a  
 18 certificate of need under this section is subject to the certificate of need requirement;  
 19 the donation or transfer may not take place without prior approval of a certificate of  
 20 need that authorizes the donation or transfer.

21 \* **Sec. 4.** AS 18.07.035 is amended to read:

22 **Sec. 18.07.035. Application and fees.** Application for a certificate of need  
 23 shall be made to the department upon a form provided by the department and must  
 24 contain the information the department requires to reach a decision **about whether to**  
 25 **issue the certificate of need** [UNDER THIS CHAPTER]. Each application for a  
 26 certificate of need must be accompanied by an application fee established by the  
 27 department by regulation. **The department shall, by regulation, set a time limit by**  
 28 **which the department shall determine whether an application submitted under**  
 29 **this section is complete and contains all of the information the department**  
 30 **requires to reach a decision about whether to issue the certificate of need.**

31 \* **Sec. 5.** AS 18.07 is amended by adding new sections to read:

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

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

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

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

12 \* **Sec. 6.** AS 18.07.043 is amended to read:

13           **Sec. 18.07.043. Standard of review for applications for certificates of need**  
 14 **and applications to modify certificates of need [RELATING TO NURSING**  
 15 **HOMES AND NURSING HOME BEDS].** (a) The department shall develop  
 16 review standards for an application for a certificate of need, or for a modification of a  
 17 certificate of need, issued under this chapter [FOR A HEALTH CARE FACILITY  
 18 THAT IS A NURSING HOME OR HAS NURSING HOME BEDS].

19                   (b) **When determining whether to approve an application for a new**  
 20 **certificate of need or to modify an existing certificate of need [IN DEVELOPING**  
 21 **THE REVIEW STANDARDS UNDER (a) OF THIS SECTION],** the department  
 22 shall consider whether

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

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

31                   (3) the **project** [ADDITIONAL NURSING HOME BEDS OR THE

1 HEALTH CARE FACILITY] demonstrates consideration of the community, regional,  
2 and statewide needs [FOR NEW NURSING HOME BEDS];

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

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

10 (6) the **project** [ADDITIONAL NURSING HOME BEDS OR THE  
11 HEALTH CARE FACILITY] demonstrates financial feasibility, including long-term  
12 viability, and what the financial effect will be on consumers and the state; and

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

16 (c) The department shall grant a sponsor a certificate of need or modify a  
17 certificate of need [THAT AUTHORIZES NURSING HOME BEDS OR THAT IS  
18 FOR A HEALTH CARE FACILITY THAT IS A NURSING HOME] if the  
19 department finds that the sponsor meets the standards established in or under this  
20 chapter.

21 \* **Sec. 7.** AS 18.07.071(b) is amended to read:

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

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

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

29 \* **Sec. 8.** AS 18.07.071(c) is amended to read:

30 (c) A temporary certificate granted under (b) of this section does not confer  
31 vested rights on behalf of the applicant. The department shall impose those special

1 limitations and restrictions concerning duration and right of extension that the  
 2 department considers appropriate. A temporary certificate may not be granted for a  
 3 period longer than necessary for the sponsor to obtain review of the action certified by  
 4 the temporary certificate under AS 18.07.051. Application for a certificate of need  
 5 **that will be reviewed** under **AS 18.07.043** [AS 18.07.041 OR 18.07.043] must  
 6 commence within 60 days **after** [OF] the date of issuance of the temporary certificate.

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

8 (c) A certificate of need shall be suspended if an accusation is filed before the  
 9 commencement of activities authorized under **AS 18.07.043** [AS 18.07.041 OR  
 10 18.07.043] that charges that factors upon which the certificate of need was issued have  
 11 changed or new factors have been discovered that significantly alter the need for the  
 12 activity authorized. A suspension of a certificate may not exceed 60 days. At the end  
 13 of this period or sooner, the department shall revoke or reinstate the certificate.

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

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

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

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

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

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

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

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

29 \* **Sec. 11.** AS 18.07.111(2) is amended to read:

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

1 \* **Sec. 12.** AS 47.30.660 is amended by adding a new subsection to read:

2 (c) The plan prepared, revised, and amended under (a) of this section must  
3 include, as a distinct component, a master plan for children's mental health services.  
4 The master plan required under this subsection must be developed in conjunction with  
5 the Alaska Mental Health Trust Authority, Alaska Mental Health Board, and Advisory  
6 Board on Alcoholism and Drug Abuse, and must provide for involvement of families  
7 of emotionally disturbed children and adolescents, community mental health  
8 providers, and providers of residential and inpatient care for children and adolescents.  
9 After gathering information through methods determined appropriate, the department  
10 shall prepare the master plan, which must include the following:

11 (1) recommended principles that should be used to guide development  
12 of a comprehensive system of care to meet the mental health needs of children and  
13 adolescents;

14 (2) an estimate of the current and projected number of children and  
15 adolescents in the state who are suffering severe emotional, mental, and substance  
16 disorders;

17 (3) a description of the current system of care for children with  
18 emotional, mental, and substance disorders, including the type, capacity, and  
19 geographic availability of care;

20 (4) an assessment of the ability of the existing service system to meet  
21 the identified and projected needs, including an assessment of utilization and factors  
22 affecting utilization;

23 (5) an assessment of gaps in the type or capacity of services needed;

24 (6) the array and capacity of in-home, community-based, residential,  
25 and inpatient care needed to meet the current and projected need for screening,  
26 diagnosis, and treatment of children and adolescents in the state who are suffering  
27 emotional, mental, and substance disorders;

28 (7) an analysis of impediments limiting or preventing development or  
29 operation of the services and capacities needed;

30 (8) recommended priorities for action to reconfigure, expand, or  
31 enhance existing services or to develop new service alternatives;

1 (9) an estimate of resources needed to develop and support the system  
2 of services required.

3 \* **Sec. 13.** AS 18.07.031(b) and 18.07.041 are repealed.

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

6 TEMPORARY MORATORIUM ON CERTAIN PSYCHIATRIC BEDS. (a)  
7 Notwithstanding the provisions of AS 18.07, the Department of Health and Social Services  
8 may not, until July 1, 2003, issue a certificate of need for construction of a health care facility  
9 that both

10 (1) includes psychiatric beds designated for children who are at least five  
11 years of age but younger than 13 years of age or for adolescents who are at least 13 years of  
12 age but younger than 20 years of age; and

13 (2) requires licensure under AS 18.20.020 as a general acute care hospital,  
14 rural primary care hospital, critical access hospital, or specialized hospital primarily engaged  
15 in the treatment of one specific type of illness or disability.

16 (b) The restriction in (a) of this section applies to applications for a certificate of need  
17 for which a certificate was not issued before the effective date of this section.

18 \* **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to  
19 read:

20 WORKING GROUP ON CERTIFICATE OF NEED PROGRAM. (a) There is  
21 established a five-member working group to analyze issues regarding, and make  
22 recommendations concerning, the state's certificate of need program. The members of the  
23 group are

24 (1) one individual appointed by the governor who is a nursing home  
25 administrator licensed under AS 08.70;

26 (2) one individual appointed by the governor who is a physician licensed  
27 under AS 08.64;

28 (3) one individual appointed by the governor who is the administrator of an  
29 acute care hospital;

30 (4) one individual appointed by the governor who is the administrator of a  
31 psychiatric hospital; and

1           (5) the commissioner of health and social services, or the commissioner's  
2 designee.

3           (b) The working group established under this section may select a presiding officer  
4 from among its members. For budgetary purposes, the working group is in the Office of the  
5 Governor, and the Office of the Governor shall provide any staff, supplies, working space,  
6 and other services or materials appropriate for the working group's purposes.

7           (c) The members of the working group appointed under (a)(1) - (4) of this section are  
8 not entitled to compensation or to per diem or travel expenses for their time spent on activities  
9 of the working group.

10          (d) After gathering information through the methods considered appropriate by the  
11 group, the working group established under this section shall prepare a report that includes the  
12 following:

13           (1) a description of the current status and costs of the state's system for  
14 providing health care services in health care facilities covered by the certificate of need  
15 program;

16           (2) the projected number of state residents who will be needing health care  
17 services from health care facilities through the years 2005, 2010, and 2020;

18           (3) the projected costs to the state, based on the projection of needs under (2)  
19 of this subsection, if no changes are made to the state's present system of health care services  
20 provided by health care facilities;

21           (4) an estimated number of state residents who are currently receiving care in  
22 out-of-state health care facilities who could be more appropriately served in this state's health  
23 care facilities or in home and community-based care;

24           (5) an estimated number of state residents who are currently receiving care in  
25 in-state health care facilities who could be more appropriately served in home- and  
26 community-based care;

27           (6) a description of the alternative methods available to provide health care  
28 services that are currently provided in health care facilities to state residents and the relative  
29 cost to the state for these methods;

30           (7) recommendations for principles that should be used to guide the  
31 development of the state's health care facility system, especially regarding appropriate means

1 for promoting the proper mix of acute care and home- and community-based care and  
2 including principles that should guide the certificate-of-need process under AS 18.07;

3 (8) specific recommendations for changes in statutes and regulations  
4 governing the certificate of need program that would clarify the standards that will be applied  
5 during review of an application for a certificate of need;

6 (9) specific recommendations about whether, and the extent to which, an  
7 application for a certificate of need should be confidential under state law.

8 (e) The working group shall deliver its report to the governor by the first day of the  
9 First Regular Session of the Twenty-Third Alaska State Legislature, and the working group is  
10 terminated on that day.

11 (f) In this section, "health care facilities" means health care facilities that are subject  
12 to review under AS 18.07 (certificate of need program).

13 \* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to  
14 read:

15 MASTER PLAN FOR CHILDREN'S MENTAL HEALTH SERVICES. The initial  
16 master plan required to be prepared under AS 47.30.660(c), added by sec. 12 of this Act, shall  
17 be completed and delivered to the governor by the first day of the First Regular Session of the  
18 Twenty-Third Alaska State Legislature, and the Department of Health and Social Services  
19 shall notify the legislature that the master plan is available for review.

20 \* **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to  
21 read:

22 APPLICABILITY. AS 18.07, as amended by secs. 1 - 11 and 13 of this Act, applies  
23 to applications for certificates of need that are initially filed on or after the effective date of  
24 this Act.

25 \* **Sec. 18.** This Act takes effect immediately under AS 01.10.070(c).