

Introduced: 1/22/73
Referred: Health, Welfare &
Education and Judiciary

BY CHANCE, BRADNER,
BOWMAN AND NAUGHTON

1 IN THE HOUSE

2 HOUSE BILL NO. 112

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act requiring a health care facilities certificate
7 of need before construction or modification of health
8 care facilities; and providing for an effective date."

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

10 * Section 1. AS 18.20 is amended by adding new sections to read:

11 ARTICLE 4. HEALTH CARE FACILITIES CERTIFICATE OF NEED.

12 Sec. 18.20.270. CERTIFICATE REQUIRED. No person may, without a
13 certificate of need issued by the commissioner,

- 14 (1) construct a health care facility,
15 (2) provide new types of services, or
16 (3) reduce services.

17 Sec. 18.20.275. ISSUANCE OF CERTIFICATE. (a) The commissioner
18 shall issue a certificate if upon consideration of a proper application
19 and upon the recommendations of a local health planning agency and the
20 Comprehensive Health Advisory Council it is found that

21 (1) the proposed facilities meet a health care facilities
22 need not presently met by existing facilities, or the proposed facilities
23 meet a health care facilities need presently met, but the proposed
24 facilities meet the need in a manner substantially superior to the
25 manner in which that need is met by existing facilities; and

26 (2) if the proposed facilities would create a duplication of
27 health care facilities, that the duplication would not weaken the state
28 health care delivery system, or unreasonably increase the cost of health
29 care services to the consumer.

1 (b) The commissioner shall issue or deny the certificate within
2 120 days of receipt of a copy of the original application. Receipt by
3 the commissioner of the application is accomplished only if the informa-
4 tion required by sec. 280(b) of this chapter is provided in full by the
5 applicant.

6 Sec. 18.20.280. APPLICATION FOR CERTIFICATE. (a) A person seek-
7 ing a certificate shall apply on the form provided by the commissioner.

8 (b) The application form shall require, but is not limited to
9 requiring, the following information:

10 (1) affirmative evidence of ability to comply with the stan-
11 dards, rules and regulations prescribed under secs. 60 - 80 of this
12 chapter;

13 (2) a statement by the applicant of

14 (A) the geographic area to be served,

15 (B) the population to be served;

16 (3) a description of the proposed construction in reasonable
17 detail including

18 (A) the capital expenditures contemplated, and

19 (B) the estimated annual operating costs, including the
20 anticipated salary costs and numbers of new staff required by the
21 proposal;

22 (4) the anticipated benefit to the area which will result
23 from the proposal;

24 (5) the estimated date of commencement and completion of
25 the project;

26 (6) a description of how the facility fits into the compre-
27 hensive health program of the area;

28 (7) the availability of financing and the manner of financing
29 the proposed construction;

1 (8) the disclosure of ownership or the nature and extent of
2 financial involvement by the sponsors in the proposed project.

3 Sec. 18.20.285. REVIEW OF APPLICATION AND RECOMMENDATION BY THE
4 PLANNING AGENCIES. (a) An application for a certificate shall be
5 submitted to the local health planning agency, with a copy to the
6 commissioner. The agency shall review the application and issue its
7 recommendations to the Comprehensive Health Advisory Council not more
8 than 60 days after receiving the application. If there is no local
9 health planning agency, the application shall be submitted directly to
10 the Comprehensive Health Advisory Council which shall review the appli-
11 cation and issue its recommendations to the commissioner not more than
12 60 days after receiving the application.

13 (b) The Comprehensive Health Advisory Council shall review the
14 recommendations of the local health planning agency and approve them or
15 issue its own recommendations not more than 30 days after receiving
16 the recommendations from the local health planning agency. These recom-
17 mendations shall be submitted to the commissioner for final action in
18 accordance with the recommendations.

19 (c) If there is a conflict between the recommendations of the
20 local health planning agency and those of the Comprehensive Health Ad-
21 visory Council, the commissioner shall make the final decision.

22 (d) An applicant may testify before the reviewing bodies to
23 explain the need the proposed facilities will meet and to present
24 evidence to establish the need for the facility.

25 Sec. 18.20.290. HEARING. When a person is aggrieved by a final
26 decision of the commissioner, he may request and obtain a hearing con-
27 ducted by the department in accordance with the Administrative Pro-
28 cedure Act (AS 44.62).

29 Sec. 18.20.295. CERTIFICATE EXPIRATION. A certificate of need

1 for construction of a new facility expires two years from the date
2 issued. However, an application may be renewed by the commissioner
3 without obtaining an agency recommendation for a reasonable period
4 required to complete construction.

5 Sec. 18.20.300. REGULATIONS. The commissioner shall promulgate
6 regulations necessary to carry out the provisions of secs. 270 - 315
7 of this chapter. Regulations shall be adopted in accord with the
8 Administrative Procedure Act (AS 44.62).

9 Sec. 18.20.305. PENALTY. A person who violates a provision of
10 sec. 270 of this chapter is punishable by a fine of not more than
11 \$500 for each day the violation or offense continues.

12 Sec. 18.20.310. ACTION TO ENJOIN CONSTRUCTION WITHOUT A CERTIFI-
13 CATE. Upon the advice of the attorney general the department may
14 maintain an action for injunction or other process against a person to
15 restrain or prevent the construction of health care facilities without
16 a certificate issued under the provisions of this chapter.

17 Sec. 18.20.315. DEFINITIONS. In secs. 270 - 315 of this chapter

18 (1) "certificate" means a health care facilities certificate
19 of need;

20 (2) "commissioner" means the commissioner of the Department
21 of Health and Social Services;

22 (3) "Comprehensive Health Advisory Council" means the
23 council created under AS 18.05.051;

24 (4) "construct" means to build and erect, or to alter,
25 modernize, or modify a facility in a substantial manner;

26 (5) "department" means the Department of Health and Social
27 Services;

28 (6) "health care facilities" means hospitals, nursing homes,
29 extended care facilities, intermediate care facilities, residential

1 care facilities, convalescent care facilities, mental health facilities,
2 outpatient care facilities, and home care facilities which are required
3 to be licensed by the department; this does not include the individual
4 practitioner or a member of a group in the conduct of his profession
5 or vocation operating independently of a health care facility required
6 to be licensed by the department;

7 (7) "local health planning agency" means an agency created
8 under sec. 314(b), P.L. 89-749;

9 (8) "new types of services" means services which require a
10 capital investment, in facilities or equipment, in excess of \$100,000
11 which is not properly chargeable as an expense of operation and main-
12 tenance under generally accepted accounting principles;

13 (9) "person" means an individual, partnership, association,
14 firm, corporation, organization or governmental unit.

15 * Sec. 2. AS 18.05.053 is amended by adding a new paragraph to read:

16 (4) review applications for health care facilities certifi-
17 cates of need and make recommendations to the commissioner on the
18 issuance of the certificates.

19 * Sec. 3. AS 18.20.010(2) is amended to read:

20 (2) the [CONSTRUCTION,] maintenance[,] and operation of
21 hospitals which will promote safe and adequate treatment of individuals
22 in hospitals.

23 * Sec. 4. AS 18.20.020 is amended to read:

24 Sec. 18.20.020. LICENSE REQUIRED. No person or government unit,
25 except the federal government, acting severally or jointly with another
26 person or governmental unit may [ESTABLISH,] conduct or maintain a
27 hospital in the state without a license.

28 * Sec. 5. AS 18.20.080(b) is amended to read:

29 (b) The department may by regulation require that a licensee

1 or applicant desiring to make a specified type of alteration or addition
2 to its facilities, for which a certificate of need is not required under
3 secs. 270 - 315 of this chapter, [OR TO CONSTRUCT NEW FACILITIES] shall,
4 before commencing the alteration or [,] addition [OR NEW CONSTRUCTION],
5 submit plans and specifications to the department for preliminary in-
6 spection and approval or recommendations with respect to compliance with
7 its regulations and standards.

8 * Sec. 6. AS 18.20.140 is amended to read:

9 Sec. 18.20.140. PURPOSE. The purpose of secs. 140 - 220 of this
10 chapter is to make an inventory of existing hospitals and medical
11 facilities, community mental health centers and facilities for the
12 mentally retarded, to survey the need for construction of hospitals and
13 medical facilities, community mental health centers and facilities for
14 the mentally retarded, and to develop a program and plan of construction
15 for each in the form of a comprehensive state health plan. The state
16 construction program developed under secs. 140 - 220 of this chapter
17 applies to health facilities defined in sec. 315(6) of this chapter
18 regardless of the manner in which the facilities are financed.

19 * Sec. 7. This Act does not affect construction of facilities or provision
20 of services authorized as of the effective date of this Act under any other
21 law.

22 * Sec. 8. This Act takes effect on the day after its passage and approval
23 or on the day it becomes law without approval.
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