

Introduced: 3/13/74  
Referred: Health, Education &  
Social Services and Judiciary

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

CS  
2 HOUSE BILL NO. 786

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

10 \* Section 1. AS 18 is amended by adding a new chapter to read:

11 CHAPTER 22. NEED CERTIFICATION FOR HEALTH CARE  
12 INSTITUTIONS AND FACILITIES.

13 Sec. 18.22.010. PURPOSE. The purpose of the need certification  
14 for health care institutions is to regulate the construction and opera-  
15 tion of health care institutions and the furnishing of services according  
16 to the needs of the various areas of the state, so as to adequately and  
17 economically develop and provide health care service for the people of  
18 the state of Alaska.

19 Sec. 18.22.020. CERTIFICATE REQUIRED. (a) After the effective  
20 date of this Act, no person may, without a certificate of need issued by  
21 the commissioner,

- 22 (1) construct a health care institution or facility,  
23 (2) alter the bed capacity of a health care institution,  
24 (3) substantially change the services provided by a health  
25 care institution or facility, or  
26 (4) solicit contributions or donations for any of the above  
27 purposes.

28 (b) Any person who on the effective date of this Act is operating  
29 or constructing a health care institution or facility, or is furnishing

1 or has contracted to furnish a service provided by a health care institu-  
2 tion or facility without the approval of the Areawide Health Planning  
3 Agency and the State Planning Agency must obtain a certificate of need  
4 from the commissioner.

5 Sec. 18.22.030. ISSUANCE OF CERTIFICATE. (a) The commissioner  
6 shall issue a certificate only if the proposed project is reasonably  
7 necessary to provide health care to the defined service area as econom-  
8 ically as is practicable, consistent with high quality standards and in  
9 such a manner as to encourage orderly, coherent, timely and economic  
10 development of adequate and effective health services in the area, region  
11 and state. In making his determination, the commissioner shall consider  
12 the following:

13 (1) recommendations of the Areawide Health Planning Agency and,  
14 if provided, recommendations of the State Planning Agency;

15 (2) the comprehensive health plans and development for the  
16 area, region and state, and the relationship of the proposal to such  
17 plans and development;

18 (3) specific data supporting the demonstration of need for  
19 the proposed change in facility or service;

20 (4) the availability and adequacy of health care services in  
21 the facilities which are currently serving the defined service area and  
22 which conform to federal and state standards;

23 (5) the need for research and educational facilities;

24 (6) economic feasibility of the proposed change in service or  
25 facility;

26 (7) evidence of a defined and accepted service area defini-  
27 tion;

28 (8) reasonable potential of the institution to meet licensure  
29 and accreditation standards, if the institution is in existence, whether

1 it has obtained approval and licenses required by law;

2 (9) the projected financial savings and improvement in  
3 services which may be derived from the operation of joint central  
4 services or from joint, cooperative or shared health resources which  
5 are accessible to the defined service area;

6 (10) the availability of sufficient professional staff for the  
7 facility;

8 (11) the needs of members, subscribers or enrollees of  
9 institutions and health care plans which operate or support particular  
10 hospitals for the purpose of rendering health care to members, sub-  
11 scribers or enrollees;

12 (12) the likelihood that the proposal will satisfy a substan-  
13 tially unmet public need for the proposed health care institution,  
14 facility or service.

15 (b) The issuance of a certificate of need for a specific project  
16 in a health care institution's long-range plan shall not constitute a  
17 guarantee that all future proposals contained in that long-range plan  
18 will receive a certificate of need; however, the existence of previously  
19 certified projects that reduce the overall cost of future projects shall  
20 be taken into account by the Areawide Health Planning Agency, the State  
21 Planning Agency, and the commissioner in reviewing subsequent proposals.

22 (c) Except for applications filed under sec. 80 of this chapter,  
23 no certificate of need may be granted or denied by the commissioner  
24 until he has received written recommendations on the application from  
25 the appropriate Areawide Health Planning Agency and the State Planning  
26 Agency as provided by sec. 70 of this chapter, or until 30 days have  
27 elapsed after notice to such agency of the application without written  
28 recommendations being filed with the commissioner.

29 (d) The commissioner shall grant or deny the application in

1 whole or in part within 120 days of receipt of a copy of the original  
2 application, unless the applicant is notified that additional informa-  
3 tion is needed, in which case the commissioner may take additional  
4 time as may be required.

5 (e) When the commissioner issues an order of denial, it shall be  
6 in writing to the applicant and shall state the reasons for such  
7 denial.

8 (f) Publication of the commissioner's decision shall be made in  
9 a newspaper of general circulation in the service area in which the  
10 health care institution is located and as may be prescribed by regula-  
11 tions to give fair notice to the public of the substance of the decision

12 (g) The applicant, the appropriate Areawide Health Planning Agency  
13 or the State Planning Agency, or any person substantially affected by  
14 the commissioner's order shall be afforded an opportunity for a hearing  
15 conducted by the department in accordance with the Administrative  
16 Procedure Act (AS 44.62).

17 Sec. 18.22.040. APPLICATIONS FOR CERTIFICATES. Application for a  
18 certificate of need or for a modification of a certificate shall be made  
19 to the commissioner and the Areawide Health Planning Agency and shall  
20 include the following information:

21 (1) the general geographic area to be served;

22 (2) the population to be served, and the characterization of  
23 the population, as well as projections of population growth by an  
24 official federal or state agency;

25 (3) a description of the service or services to be provided  
26 or reduced;

27 (4) the anticipated demand for the health care institution,  
28 service or facility to be provided;

29 (5) utilization of existing programs within the area to be

1 served offering the same or similar health care services;

2 (6) the benefit to the community or the population to be  
3 served which will result from the proposed project as well as the antici-  
4 pated impact on other facilities offering the same or similar services  
5 in the area;

6 (7) a statement showing the existing working relationship  
7 among the facilities within the defined service area;

8 (8) a description of how the institution, facility or service  
9 fits into the comprehensive health program of the area and state;

10 (9) evaluation and recommendation as to need by the Areawide  
11 Health Planning Agency and the State Planning Agency, or if no areawide  
12 comprehensive health plan exists, the department may utilize such other  
13 resources as it considers necessary and appropriate;

14 (10) the disclosure of ownership or the nature and extent of  
15 financial involvement by the sponsors in the proposed project;

16 (11) the estimated date of commencement and completion of the  
17 project;

18 (12) the availability of financing and the manner of financing  
19 the proposed project; and

20 (13) any other information as may reasonably be prescribed by  
21 regulations of the commissioner.

22 Sec. 18.22.050. LIMITATION OF CERTIFICATE. (a) A certificate of  
23 need is valid for that period of time, not to exceed two years, as may  
24 reasonably be required to complete preparation of detailed construction  
25 plans, secure necessary funds and building permits, commence construc-  
26 tion of the health care institution or facility in question, establish  
27 a new service or reduce an existing service.

28 (b) With the approval of the Areawide Health Planning Agency and  
29 the State Planning Agency, the commissioner may renew the certificate

1 for such further periods as may be reasonable where the applicant has  
2 shown that substantial and continuing progress towards commencement of  
3 the project has been demonstrated.

4 (c) A certificate of need issued to an applicant for a particular  
5 project is not transferable or assignable without the approval of the  
6 commissioner.

7 (d) When an application is for a multi-phased project, the commis-  
8 sioner may take individual action on separable portions of the applica-  
9 tion.

10 Sec. 18.22.060. CERTIFICATE CONSTITUTES AN AGREEMENT OF SERVICE.  
11 An application for a certificate of need and acceptance thereof as  
12 issued by the commissioner shall constitute an agreement that the appli-  
13 cant will render reasonably adequate service as to the health care  
14 institution, facility or certificated service in accordance with the  
15 certificate of need. Failure to comply with the agreement shall con-  
16 stitute grounds for modification, suspension or revocation of the certi-  
17 ficate of need and other remedies as provided by secs. 100 and 110 of  
18 this chapter.

19 Sec. 18.22.070. REVIEW OF APPLICATION AND RECOMMENDATION BY THE  
20 PLANNING AGENCIES. (a) An application for a certificate shall be  
21 submitted to the Areawide Health Planning Agency, with a copy to the  
22 commissioner. The agency shall review the application and issue its  
23 recommendations to the State Planning Agency not more than 60 days  
24 after receiving the application. If there is no Areawide Health  
25 Planning Agency, the application shall be submitted directly to the  
26 State Planning Agency which shall review the application and issue its  
27 recommendations to the commissioner not more than 60 days after receiv-  
28 ing the application. The State Planning Agency shall review the  
29 recommendations of the Areawide Health Planning Agency and approve

1 them or issue its own recommendations not more than 30 days after  
2 receiving the recommendations from the Areawide Health Planning Agency.  
3 These recommendations shall be submitted to the commissioner for final  
4 action in accordance with the recommendations. If there is a conflict  
5 between the recommendations of the Areawide Health Planning Agency and  
6 those of the State Planning Agency, the commissioner shall make the  
7 final decision.

8 (b) An applicant may testify before the reviewing bodies to  
9 explain the need the proposed facilities will meet and to present  
10 evidence to establish the need for the facility.

11 (c) Copies of agency reports and recommendations to the commis-  
12 sioner shall be simultaneously furnished to the applicant or the  
13 person affected by a hearing, and any applicant and any person affected  
14 by a hearing shall have equal right of consultation with agencies.

15 Sec. 18.22.080. TEMPORARY AND EMERGENCY CERTIFICATES BEFORE  
16 HEARING. A person may apply for a temporary or emergency certificate  
17 for the temporary construction or operation of a health care institution  
18 or a facility or the temporary furnishing or reduction of a service,  
19 and request waiver of the provisions of secs. 50, 60 and 70 of this  
20 chapter. The commissioner may, in his discretion, waive such provisions  
21 and grant such a temporary or emergency certificate upon a showing, by  
22 affidavit or informal hearing, of (1) necessity for early, immediate or  
23 temporary relief; and (2) adverse effect to the public interest by  
24 reason or any delay occasioned by compliance with the provisions of  
25 secs. 30, 70 and 90 of this chapter. Temporary certificates granted  
26 hereunder shall confer no vested rights and shall be subject to such  
27 special limitations and restrictions, as to duration and right of  
28 extensions or renewal, as may be imposed by the commissioner.

29 Sec. 18.22.090. NOTICE OF APPLICATION TO THE GENERAL PUBLIC,

1 PARTIES AND OTHER INTERESTED PERSONS. Except as otherwise provided by  
2 sec. 80 of this chapter, the commissioner shall give notice to the  
3 general public by publication of notice of the substance of an applica-  
4 tion under sec. 20 of this chapter, as may be prescribed by regulations  
5 of the commissioner, in a newspaper of general circulation published in  
6 the service area in which the health care institution is located at least  
7 once each week for three successive weeks, with the first such publica-  
8 tion of notice being made not more than 60 days from date of receipt of  
9 the notice of application. In addition, the commissioner may, in his  
10 discretion, require that copies of such notice be sent by certified or  
11 registered mail to such other person or persons as may appear to have a  
12 direct or adverse interest in the application. The commissioner may also  
13 make such informal distribution of notice as he may consider appropriate.  
14 The first such notice shall be published as soon as practicable after  
15 determination that an application conforms to sec. 40 of this chapter.

16 Sec. 18.22.100. PROCEEDINGS FOR MODIFICATION, REVOCATION OR OTHER  
17 CORRECTIVE ACTION BY COMMISSIONER. (a) Modification or surrender of an  
18 existing certificate of need may be obtained at the instance of the  
19 certificate holder by applying for a certificate of need under sec. 30  
20 of this chapter. Modification, suspension or revocation of an existing  
21 certificate of need may be had at the instance of the commissioner, on  
22 complaint of any member of the public who is substantially affected by  
23 the exercise of the certificate of need, or at the instance of any other  
24 person making application for a certificate of need. No such action  
25 shall be taken by the commissioner except pursuant to notice, hearing  
26 and compliance with reasonable rules of practice and procedure adopted  
27 by the department; however, no certificate issued under sec. 20(b) of  
28 this chapter shall be modified, suspended or revoked except for misrep-  
29 resentation in the application therefor, failure to render reasonably

1 adequate service thereunder or loss of license or permit to exercise  
2 the substantial functions thereof.

3 (b) A certificate of need may be suspended when, before the  
4 commencement of the project, factors upon which the certificate of  
5 need was issued have changed or new factors have been discovered which  
6 significantly alter the need for the project, or significantly alter  
7 the facts and circumstances which justified issuance of the original  
8 certificate of need. A suspension of a certificate shall not exceed  
9 120 days. At the end of this period or sooner, a review of the suspen-  
10 sion shall be made and the certificate reinstated or revoked.

11 (c) A certificate of need may be revoked (1) after six months of  
12 issuance if the applicant has not shown continuing progress towards  
13 commencement of the project, or (2) when, after commencement of the  
14 project, the applicant fails without good cause to make reasonable and  
15 continuing progress toward completion.

16 (d) When the commissioner issues an order of revocation or suspen-  
17 sion, it shall be in writing and shall state the reasons for such  
18 revocation or suspension.

19 (e) An applicant whose certificate of need has been revoked may  
20 reapply for a certificate of need by submitting whatever information is  
21 required by the commissioner.

22 (f) An applicant whose certificate of need has been revoked or  
23 suspended shall be afforded an opportunity for an administrative hearing  
24 in accordance with the Administrative Procedure Act (AS 44.62).

25 Sec. 18.22.110. INJUNCTIVE RELIEF AND PENALTIES FOR VIOLATION OF  
26 ACT. Injunctive relief against violations of this chapter or any  
27 reasonable rules and regulations of the commissioner may be obtained  
28 from any court of competent jurisdiction at the instance of the commis-  
29 sioner, the licensing agency for the type of health care institution

1 affected, any holder of a certificate of need that is adversely affected  
2 in the exercise of the privileges thereunder by such violation, or any  
3 member of the public substantially and adversely affected by such  
4 violation. Upon written request by the commissioner or the licensing  
5 agency of the type of health care institution affected, the attorney  
6 general shall furnish legal services as may be appropriate and to  
7 prosecute such action for injunctive relief to an appropriate conclusion.  
8 Wilful violation of the provisions of this chapter, or lawful rules  
9 and regulations issued under it, shall constitute a misdemeanor, punish-  
10 able as otherwise provided by law, on the part of such person and each  
11 other person having the control or management of the person or health  
12 care institution wilfully violating this chapter. Each day of continuing  
13 violation shall constitute a separate offense.

14 Sec. 18.22.120. REGULATIONS. (a) The commissioner shall promul-  
15 gate regulations to effectuate the provisions and purposes of this  
16 chapter, including but not limited to the establishment of requirements  
17 for a uniform statewide system of reporting financial and other operating  
18 data.

19 (b) Before adopting regulations for the administration of the  
20 Act, the commissioner shall give notice of his intention to adopt and  
21 promulgate the regulations by publishing a notice in a newspaper of  
22 general circulation in Juneau, Alaska at least once each week for  
23 three successive weeks, with the first such publication of notice  
24 being at least 30 days before the time set for hearing. The notice  
25 shall indicate where copies of the proposed regulations may be examined.  
26 At least 30 days before the time set for hearing, the commissioner  
27 shall send copies of the proposed regulations to all known health care  
28 institutions as their names and addresses appear as licensed with the  
29 department. Failure of any health care institution to be mailed, or

1 to receive, a copy of the notice shall not prevent the commissioner  
2 from promulgating the regulations. Any amendment, modification, or  
3 repeal of the regulations shall be adopted and promulgated in accor-  
4 dance with the same procedure, except that notice thereof shall specify  
5 the articles or sections affected and shall contain either the verbatim  
6 provisions as proposed to be amended or modified, or proposed to be  
7 repealed, or a reasonable summary.

8 Sec. 18.22.130. DEFINITIONS. In this chapter,

9 (1) "Areawide Health Planning Agency" means an agency created  
10 under sec. 314(b) of the Public Health Service Act (P.L. 89-749) as  
11 amended;

12 (2) "commissioner" means the commissioner of the Department  
13 of Health and Social Services or his designee;

14 (3) "construction" means the erection, building or substantial  
15 acquisition, alteration, reconstruction, improvement, extension or modi-  
16 fication of a health care facility under this Act, including equipment,  
17 the inspection and supervision thereof, excavation or other actions  
18 necessary thereto, which cost in excess of \$100,000; "construct" shall  
19 mean and include any action of construction;

20 (4) "department" means the Department of Health and Social  
21 Services;

22 (5) "facility" means and includes all property, whether real,  
23 personal or mixed, used in the operation of a health care institution  
24 or primarily used or useful in furnishing or performing one or more  
25 services or supportive functions for the operation of one or more health  
26 institutions, but "facility" shall not include

27 (A) expendable supplies or supplies chargeable as an  
28 expense of operation or maintenance under generally accepted account-  
29 ing principles;

1 (B) improvements to real property or replacements, addi-  
2 tions to or remodeling of improvements to real property that do not  
3 change the bed capacity of any health care institution furnishing  
4 inpatient services, that do not constitute a major change in  
5 function of an existing facility, and that do not have a cost or  
6 fair market value, regardless of basis of acquisition, in excess  
7 of \$100,000;

8 (6) "firm commitment" means

9 (A) an executed, unconditional written agreement not  
10 subject to unilateral cancellation for the acquisition or construc-  
11 tion of facilities, or for furnishing a service or services; or

12 (B) actual construction of facilities peculiarly adapted  
13 to the furnishing of one or more particular services and with the  
14 bona fide intention of furnishing such service or services;

15 (7) "health care institution" means

16 (A) a hospital defined as an institution, place, building  
17 or agency, public or private, incorporated or not incorporated,  
18 which provides facilities for inpatient care of one or more persons,  
19 and inpatient health services, including physician services, through  
20 an organized medical staff and continuous nursing services for the  
21 prevention, diagnosis or treatment of patients, both surgical and  
22 nonsurgical, and which is licensed for operation under the laws of  
23 this state;

24 (B) a nursing home or extended care facility defined as  
25 a home, place, institution or facility which is not a hospital and  
26 which provides convalescent, chronic or nursing care to sick,  
27 invalid, infirm, disabled or convalescent persons in addition to  
28 lodging and board, and which is licensed for operation under the  
29 laws of this state;

1 (C) an institution, whether publicly or privately owned  
2 or operated, which furnishes inpatient bed care for periods of 24  
3 hours or more, and which is licensed for operation under the laws  
4 of this state;

5 (D) a health maintenance organization defined as a per-  
6 son who contracts to provide, on a prepaid basis, medical or  
7 surgical services, or any services as defined in this Act, in a  
8 health care plan, and which is licensed for operation under the  
9 laws of this state;

10 (8) "person" means an individual, partnership, association,  
11 firm, corporation, organization or governmental unit other than the  
12 United States or any agency or instrumentality of it;

13 (9) "service" includes

14 (A) one or more of the services customarily furnished  
15 on either an inpatient or outpatient basis by health care insti-  
16 tutions, whether or not involving use of special equipment or  
17 facilities, including but not limited to nursing care and services,  
18 X-ray examination or therapy, emergency room service, obstetrical  
19 and newborn nursing service, pediatric service, anesthesia and  
20 other services supportive of surgery, laboratory services, physical  
21 laboratory services, physical therapy, pathology services, and  
22 pharmaceutical services, together with all other services related  
23 to health care, provided by a health care institution; and

24 (B) all other health care services requiring bed care  
25 of patients or the other supportive services of a health care  
26 institution, but "service" shall not include the lawful practice  
27 of any profession or vocation conducted independently of a health  
28 care institution and in accordance with applicable licensing laws  
29 of this state;

1 (10) "service area" means the geographic territory within  
2 which a health care institution is authorized and obligated to furnish  
3 a particular type of service to residents and other appropriate persons  
4 under one or more certificates of need; a certificate holder may be  
5 awarded separate service areas for each type of service which will not  
6 necessarily coincide;

7 (11) "State Planning Agency" means the Comprehensive Health  
8 Advisory Council created under AS 18.05.051.

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

10 (4) review applications for health care institutions' certi-  
11 ficates of need and make recommendations to the commissioner on the  
12 issuance of the certificates.

13 \* Sec. 3. AS 18.20.080(b) is amended to read:

14 (b) The department may by regulation require that a licensee or  
15 applicant desiring to make a specified type of alteration or addition  
16 to its facilities for which a certificate of need is not required [OR  
17 TO CONSTRUCT NEW FACILITIES] shall, before commencing the alteration  
18 or [,] addition [OR NEW CONSTRUCTION], submit plans and specifications  
19 to the department for preliminary inspection and approval or recommenda-  
20 tions with respect to compliance with its regulations and standards.

21 \* Sec. 4. AS 18.20.140 is amended to read:

22 Sec. 18.20.140. PURPOSE. The purpose of secs. 140 - 220 of this  
23 chapter is to make an inventory of existing hospitals and medical facili-  
24 ties, community mental health centers and facilities for the mentally  
25 retarded, to survey the need for construction of hospitals and medical  
26 facilities, community mental health centers and facilities for the  
27 mentally retarded, and to develop a program and plan of construction  
28 for each in the form of a comprehensive state health plan. The state  
29 construction program developed under secs. 140 - 220 of this chapter

1 applies to health institutions as they are defined in ch. 22 of this  
2 title, regardless of the manner in which the institutions are financed.

3 \* Sec. 5. No health care institution constructed or in construction after  
4 the effective date of this Act shall be eligible to apply for or receive  
5 funds under the provisions of AS 18.20.140 - 18.20.220, unless the institution  
6 has applied for and been granted a certificate of need under AS 18.22.

7 \* Sec. 6. This Act takes effect on the day after its passage and approval  
8 or on the day it becomes law without approval.

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