

Introduced: 2/5/75
Referred: Health, Education
and Social Services

1 IN THE SENATE

BY CHANCE

2 SENATE BILL NO. 133

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST 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.

19 Sec. 18.22.020. CERTIFICATE REQUIRED. After the effective date
20 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
27 purposes in (1) - (3) of this section.

28 Sec. 18.22.030. ISSUANCE OF CERTIFICATE. (a) The commissioner
29 shall issue a certificate only if the proposed project is reasonably

1 necessary to provide health care to the defined service area as econom-
2 ically as is practicable, consistent with high quality standards and in
3 such a manner as to encourage orderly, coherent, timely and economic
4 development of adequate and effective health services in the area, region
5 and state. In making his determination, the commissioner shall consider
6 the following:

7 (1) recommendations of the areawide health planning agency
8 and, if provided, recommendations of the state planning agency;

9 (2) the comprehensive health plans and development for the
10 area, region and state, and the relationship of the proposal to the
11 plans and development;

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

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

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

18 (6) economic feasibility of the proposed change in service or
19 facility;

20 (7) evidence of a defined and accepted service area defini-
21 tion;

22 (8) reasonable potential of the institution to meet licensure
23 and accreditation standards, if the institution is in existence, whether
24 it has obtained approval and licenses required by law;

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

29 (10) the availability of sufficient professional staff for the

1 facility;

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

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

9 (b) The issuance of a certificate of need for a specific project
10 in a health care institution's long-range plan does not constitute a
11 guarantee that all future proposals contained in that long-range plan
12 will receive a certificate of need; however, the existence of previously
13 certified projects that reduce the overall cost of future projects shall
14 be taken into account by the areawide health planning agency, the state
15 planning agency, and the commissioner, in reviewing subsequent proposals.

16 (c) Except for applications filed under sec. 80 of this chapter,
17 no certificate of need may be granted or denied by the commissioner
18 until he has received written recommendations on the application from
19 the appropriate areawide health planning agency and the state planning
20 agency as provided by sec. 70 of this chapter, or until 30 days have
21 elapsed after notice to that agency that the application was filed with
22 the commissioner without written recommendations. The commissioner may
23 grant to the agency a reasonable extension if the agency is unable to
24 adequately evaluate the application within 30 days.

25 (d) The commissioner shall grant or deny the application in
26 whole or in part within 120 days of receipt of a copy of the original
27 application, unless the applicant is notified that additional informa-
28 tion is needed, in which case the commissioner may take additional
29 time as may be required.

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

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

7 (g) The applicant, the appropriate areawide health planning agency
8 or the state planning agency, or any person substantially affected by
9 the commissioner's order shall be afforded an opportunity for a hearing
10 conducted by the department in accordance with the Administrative
11 Procedure Act (AS 44.62).

12 Sec. 18.22.040. APPLICATIONS FOR CERTIFICATES. Application for a
13 certificate of need or for a modification of a certificate shall be made
14 to the commissioner and the areawide health planning agency and shall
15 include the following information:

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

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

20 (3) a description of the service to be provided or reduced;

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

23 (5) utilization of existing programs within the area to be
24 served offering the same or similar health care services;

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

29 (7) a statement showing the existing working relationship

1 among the facilities within the defined service area;

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

4 (9) the disclosure of ownership or the nature and extent of
5 financial involvement by the sponsors in the proposed project;

6 (10) the estimated date of commencement and completion of the
7 project;

8 (11) the availability of financing and the manner of financing
9 the proposed project; and

10 (12) any other information as may reasonably be prescribed by
11 regulations of the commissioner.

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

18 (b) With the approval of the areawide health planning agency and
19 the state planning agency, the commissioner may renew the certificate
20 for further periods which may be reasonable if the applicant has shown
21 that substantial and continuing progress towards commencement of the
22 project has been accomplished.

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

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

29 Sec. 18.22.060. CERTIFICATE CONSTITUTES AN AGREEMENT OF SERVICE.

1 An application for a certificate of need and acceptance of the certifi-
2 cate as issued by the commissioner constitutes an agreement that the
3 applicant will render reasonably adequate service as to the health
4 care institution, facility or certificated service in accordance with
5 the certificate of need. Failure to comply with the agreement con-
6 stitutes grounds for modification, suspension or revocation of the
7 certificate of need and other remedies as provided by secs. 100 and
8 110 of this chapter.

9 Sec. 18.22.070. REVIEW OF APPLICATION AND RECOMMENDATION BY THE
10 PLANNING AGENCIES. (a) An application for a certificate shall be
11 submitted to the areawide health planning agency, with a copy to the
12 commissioner. The agency shall review the application and issue its
13 recommendations to the state planning agency not more than 60 days
14 after receiving the application. If there is no areawide health
15 planning agency, the application shall be submitted directly to the
16 state planning agency which shall review the application and issue its
17 recommendations to the commissioner not more than 60 days after receiv-
18 ing the application. The state planning agency shall review the
19 recommendations of the areawide health planning agency and approve
20 them or issue its own recommendations not more than 30 days after
21 receiving the recommendations from the areawide health planning agency.
22 These recommendations shall be submitted to the commissioner for final
23 action in accordance with the recommendations. If there is a conflict
24 between the recommendations of the areawide health planning agency and
25 those of the state planning agency, the commissioner shall make the
26 final decision.

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

1 (c) Copies of agency reports and recommendations to the commis-
2 sioner shall be simultaneously furnished to the applicant or the
3 person affected by a hearing, and an applicant and a person affected
4 by a hearing shall have equal right of consultation with agencies.

5 Sec. 18.22.080. TEMPORARY AND EMERGENCY CERTIFICATES BEFORE
6 HEARING. A person may apply for a temporary or emergency certificate
7 for the construction or operation of a health care institution or a
8 facility or the temporary furnishing or reduction of a service, and
9 request waiver of the provisions of secs. 50, 60 and 70 of this
10 chapter. The commissioner may, in his discretion, waive these provi-
11 sions and grant a temporary or emergency certificate upon a showing,
12 by affidavit or informal hearing, of (1) necessity for early, immediate
13 or temporary relief; and (2) adverse effect to the public interest by
14 reason of delay occasioned by compliance with the provisions of secs.
15 30, 70 and 90 of this chapter. Temporary certificates granted under
16 this section confer no vested rights and are subject to the special
17 limitations and restrictions, as to duration and right of extensions
18 or renewal, as may be imposed by the commissioner.

19 Sec. 18.22.090. NOTICE OF APPLICATION TO THE GENERAL PUBLIC,
20 PARTIES AND OTHER INTERESTED PERSONS. Except as otherwise provided by
21 sec. 80 of this chapter, the commissioner shall give notice of the
22 substance of an application under sec. 20 of this chapter, as may be
23 prescribed by regulations of the commissioner, to the general public
24 by publication in a newspaper of general circulation published in the
25 service area in which the health care institution is located at least
26 once each week for three successive weeks, with the first publication
27 of notice being made not more than 60 days from date of receipt of the
28 notice of application. In addition, the commissioner may, in his
29 discretion, require that copies of the notice be sent by certified or

1 registered mail to other persons who may appear to have a direct or
2 adverse interest in the application. The commissioner may also make
3 informal distribution of notice which he may consider appropriate.
4 The first notice shall be published as soon as practicable after
5 determination that an application conforms to sec. 40 of this chapter.

6 Sec. 18.22.100. PROCEEDINGS FOR MODIFICATION, REVOCATION OR OTHER
7 CORRECTIVE ACTION BY COMMISSIONER. (a) Modification or surrender of an
8 existing certificate of need may be obtained at the instance of the
9 certificate holder by applying for a certificate of need under sec. 30
10 of this chapter. Modification, suspension or revocation of an existing
11 certificate of need may be had at the instance of the commissioner, on
12 complaint of any member of the public who is substantially affected by
13 the exercise of the certificate of need, or at the instance of any other
14 person making application for a certificate of need. No such action
15 may be taken by the commissioner without notice, hearing and compliance
16 with reasonable rules of practice and procedure adopted by the depart-
17 ment.

18 (b) A certificate of need may be suspended when, before the
19 commencement of the project, factors upon which the certificate of
20 need was issued have changed or new factors have been discovered which
21 significantly alter the need for the project, or significantly alter
22 the facts and circumstances which justified issuance of the original
23 certificate of need. A suspension of a certificate may not exceed
24 120 days. At the end of this period or sooner, a review of the suspen-
25 sion shall be made and the certificate reinstated or revoked.

26 (c) A certificate of need may be revoked (1) after six months of
27 issuance if the applicant has not shown continuing progress towards
28 commencement of the project, or (2) when, after commencement of the
29 project, the applicant fails without good cause to make reasonable and

1 continuing progress toward completion.

2 (d) When the commissioner issues an order of revocation or suspen-
3 sion, the order shall be in writing and shall state the reasons for the
4 revocation or suspension.

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

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

11 Sec. 18.22.110. INJUNCTIVE RELIEF AND PENALTIES FOR VIOLATION OF
12 ACT. Injunctive relief against violations of this chapter or any
13 reasonable regulations of the commissioner may be obtained from a
14 court of competent jurisdiction at the instance of the commissioner,
15 a holder of a certificate of need that is adversely affected in the
16 exercise of the privileges thereunder by the violation, or any member
17 of the public substantially and adversely affected by the violation.
18 Upon written request by the commissioner, the attorney general shall
19 furnish legal services as may be appropriate and to prosecute the
20 action for injunctive relief to an appropriate conclusion. Wilful
21 violation of the provisions of this chapter, or lawful regulations
22 issued under it, constitutes a misdemeanor, punishable as otherwise
23 provided by law, on the part of that person and each other person
24 having the control or management of the person or health care institu-
25 tion wilfully violating this chapter. Each day of continuing violation
26 constitutes a separate offense.

27 Sec. 18.22.120. REGULATIONS. (a) The commissioner shall promul-
28 gate regulations to carry out the provisions and purposes of this
29 chapter, including but not limited to the establishment of requirements

1 for a uniform statewide system of reporting financial and other operating
2 data.

3 (b) Before adopting regulations for the administration of this
4 chapter, the commissioner shall give notice of his intention to adopt and
5 promulgate the regulations by publishing a notice in a newspaper of
6 general circulation in Juneau, Alaska at least once each week for
7 three successive weeks, with the first publication of notice being at
8 least 30 days before the time set for hearing. The notice shall
9 indicate where copies of the proposed regulations may be examined. At
10 least 30 days before the time set for hearing, the commissioner shall
11 send copies of the proposed regulations to all known health care
12 institutions as their names and addresses appear as licensed with the
13 department. Failure of a health care institution to be mailed, or
14 to receive, a copy of the notice does not prevent the commissioner
15 from promulgating the regulations. An amendment, modification, or
16 repeal of the regulations shall be adopted and promulgated in accor-
17 dance with the same procedure, except that notice shall specify the
18 articles or sections affected and shall contain either the verbatim
19 provisions as proposed to be amended or modified, or proposed to be
20 repealed, or a reasonable summary.

21 Sec. 18.22.130. DEFINITIONS. In this chapter,

22 (1) "areawide health planning agency" means an agency
23 created under sec. 314(b) of the Public Health Service Act (P.L. 89--
24 749) as amended, or an agency designated by the commissioner which
25 performs health planning functions in a manner similar to an agency
26 created under sec. 314(b);

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

29 (3) "construction" means the erection, building or substantial

1 acquisition, alteration, reconstruction, improvement, extension or modi-
2 fication of a health care facility under this chapter, including
3 equipment, inspection and supervision, excavation or other necessary
4 actions, which cost in excess of \$100,000; "construct" means and
5 includes any action of construction;

6 (4) "department" means the Department of Health and Social
7 Services;

8 (5) "facility" means and includes all property, whether
9 real, personal or mixed, used in the operation of a health care insti-
10 tution or primarily used or useful in furnishing or performing one or
11 more services or supportive functions for the operation of one or more
12 health institutions, but "facility" does not include

13 (A) expendable supplies or supplies chargeable as an
14 expense of operation or maintenance under generally accepted account-
15 ing principles;

16 (B) improvements to real property or replacements, addi-
17 tions to or remodeling of improvements to real property that do not
18 change the bed capacity of a health care institution furnishing
19 inpatient services, that do not constitute a major change in
20 function of an existing facility, and that do not have a cost or
21 fair market value, regardless of basis of acquisition, in excess
22 of \$100,000;

23 (6) "firm commitment" means

24 (A) an executed, unconditional written agreement not
25 subject to unilateral cancellation for the acquisition or construc-
26 tion of facilities, or for furnishing a service; or

27 (B) actual construction of facilities peculiarly adapted
28 to the furnishing of one or more particular services and with the
29 bona fide intention of furnishing the service;

1 (7) "health care institution" means

2 (A) a hospital defined as an institution, place, building
3 or agency, public or private, incorporated or not incorporated,
4 which provides facilities for inpatient care of one or more persons,
5 and inpatient health services, including physician services, through
6 an organized medical staff and continuous nursing services for the
7 prevention, diagnosis or treatment of patients, both surgical and
8 nonsurgical, and which is licensed for operation under the laws of
9 this state;

10 (B) a nursing home or extended care facility defined as
11 a home, place, institution or facility which is not a hospital and
12 which provides convalescent, chronic or nursing care to sick,
13 invalid, infirm, disabled or convalescent persons in addition to
14 lodging and board, and which is licensed for operation under the
15 laws of this state;

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

20 (8) "person" includes a corporation, company, partnership,
21 firm, association, organization, business trust, society, natural
22 person or governmental unit, but "person" does not include the United
23 States or an agency or instrumentality of it except in the case of
24 voluntary submission to the provisions of this chapter;

25 (9) "service" includes

26 (A) one or more of the services customarily furnished
27 on either an inpatient or outpatient basis by health care insti-
28 tutions, whether or not involving use of special equipment or
29 facilities, including but not limited to nursing care and services,

1 X-ray examination or therapy, emergency room service, obstetrical
2 and newborn nursing service, pediatric service, anesthesia and
3 other services supportive of surgery, laboratory services, physical
4 laboratory services, physical therapy, pathology services, and
5 pharmaceutical services, together with all other services related
6 to health care, provided by a health care institution; and

7 (B) all other health care services requiring bed care
8 of patients or the other supportive services of a health care
9 institution, but "service" does not include the lawful practice
10 of a profession or vocation conducted independently of a health
11 care institution and in accordance with applicable licensing laws
12 of this state;

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

19 (11) "state planning agency" means the Comprehensive Health
20 Advisory Council created under AS 18.05.051.

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

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

25 * Sec. 3. AS 18.20.080 is amended to read:

26 Sec. 18.20.080. INSPECTION AND CONSULTATION FOR ALTERATIONS. (a)
27 The department shall make annual inspections and investigations of
28 hospital facilities.

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

1 applicant who is not subject to the requirements of ch. 22 of this title
2 and who desires [DESIRING] to make a specified type of alteration or
3 addition to its facilities [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
6 inspection and approval or recommendations with respect to compliance
7 with its regulations and standards.

8 (c) The department shall by regulation require that a licensee
9 or applicant who is subject to the requirements of ch. 22 of this
10 title and who desires to make a specified type of alteration or addi-
11 tion or to construct a new facility shall, before commencing the
12 alteration, addition or new construction, submit plans and specifica-
13 tions to the department for inspection and approval or recommendations
14 with respect to compliance with its regulations and standards.

15 * Sec. 4. AS 18.20.140 is amended to read:

16 Sec. 18.20.140. PURPOSE. The purpose of secs. 140 - 220 of this
17 chapter is to make an inventory of existing hospitals and medical facili-
18 ties, community mental health centers and facilities for the mentally
19 retarded, to survey the need for construction of hospitals and medical
20 facilities, community mental health centers and facilities for the
21 mentally retarded, and to develop a program and plan of construction
22 for each in the form of a comprehensive state plan for health facili-
23 ties. The state program for health facilities developed under secs.
24 140 - 220 of this chapter applies to health institutions as they are
25 defined in ch. 22 of this title, regardless of the manner in which the
26 institutions are financed.

27 * Sec. 5. No health care institution proposed, planned or in construction
28 after the effective date of this Act is eligible to receive funds under the
29 provisions of AS 18.20.140 - 18.20.220, unless the institution has applied

1 for and been granted a certificate of need under AS 18.22.

2 * Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-
3 070(c).

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