

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 399

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to state coordination of health
7 planning and development; and providing for an effective
8 date."

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

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* Section 1. AS 18.07 is amended by adding a new section to read:

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Sec. 18.07.005. LEGISLATIVE PURPOSE. It is the purpose of this
12 chapter to create a rational framework for the planning and develop-
13 ment of health care services in the state to assure promotion and
14 protection of public health, to provide equitable access to health
15 services, and to avoid unnecessary increases in health care costs.

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* Sec. 2. AS 18.07.021 is amended to read:

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Sec. 18.07.021. STATE HEALTH PLANNING AND DEVELOPMENT [AGENCY].
18 The department [OFFICE OF PLANNING AND RESEARCH IN THE DEPARTMENT] is
19 responsible for [THE] state health planning and development and
20 [AGENCY DESIGNATED UNDER 42 U.S.C. 300m(b)(3). THE OFFICE] shall
21 [PERFORM THE FUNCTIONS ENUMERATED UNDER sec. 42 U.S.C. 300m-2,]
22 administer the certificate of need program outlined in AS 18.07.031
23 [AS 18.07.041] - 18.07.111, and other functions prescribed in this
24 chapter.

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* Sec. 3. AS 18.07.031 is repealed and reenacted to read:

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Sec. 18.07.031. CERTIFICATE OF NEED REQUIRED. Unless authorized
27 under the terms of a certificate of need issued by the department, a
28 person may not

29

(1) make a capital expenditure, including any rededication

1 of assets, of \$1,000,000 or more for construction of a health care
2 facility;

3 (2) alter the bed capacity of a health care facility;

4 (3) add or eliminate a category of health services provided
5 by a health care facility; or

6 (4) acquire a health care facility.

7 * Sec. 4. AS 18.07.051 is amended by adding a new subsection to read:

8 (b) A certificate of need is valid only for the defined scope,
9 physical location, and person stated in the certificate.

10 * Sec. 5. AS 18.07.061 is amended to read:

11 Sec. 18.07.061. MODIFICATION AND TERMINATION OF ACTIVITIES. (a)
12 The certificate holder shall apply to the department [OFFICE] for a
13 modification of the certificate [BEFORE TERMINATING PART OF THE ACTIV-
14 ITIES AUTHORIZED BY THE TERMS OF ISSUANCE, BUT THE CERTIFICATE HOLDER
15 IS NOT REQUIRED TO OBTAIN THE ACQUIESCENCE OF THE OFFICE] before
16 transferring the certificate, or modifying or terminating all or part
17 of the activities authorized by the certificate. If a certificate
18 holder intends to terminate [TERMINATES] all of the activities au-
19 thorized by a certificate, the certificate holder is required to apply
20 to [NOTIFY] the department [OFFICE] 60 days before termination and to
21 surrender the certificate to the department [OFFICE] within 30 days
22 after [OF] termination.

23 (b) An application for transfer of a certificate must be made on
24 forms provided by the department and must contain

25 (1) evidence that the transferee is able to assume owner-
26 ship or operation of the health care facility and to provide the
27 appropriate health services;

28 (2) evidence that the transferee is acquiring the health
29 care facility at no more than its current fair market value; and

1 (3) other information that the department may require.

2 (c) Any transfer of a certificate may be subject to conditions
3 the department considers necessary.

4 * Sec. 6. AS 18.07.071 is repealed and reenacted to read:

5 Sec. 18.07.071. EMERGENCY CERTIFICATES. The department shall
6 expedite review of an application for a certificate of need under
7 AS 18.07.031(1) that is required (1) to eliminate or prevent imminent
8 safety hazards as defined by a federal, state, or local fire, build-
9 ing, or life safety code or regulation; (2) to comply with state
10 licensure standards; or (3) to comply with accreditation standards,
11 compliance with which is required to receive federal reimbursement.
12 An application approved under this section may be approved only to the
13 extent that the capital expenditure is required to eliminate or pre-
14 vent the hazards or to comply with the standards described in this
15 section.

16 * Sec. 7. AS 18.07 is amended by adding a new section to read:

17 Sec. 18.07.079. FINAL DECISION. (a) The department may, upon
18 consideration of an application and review of findings made under
19 AS 18.07.031 - 18.07.111,

20 (1) approve part or all of the application and issue a
21 certificate of need that includes any conditions that the department
22 considers appropriate;

23 (2) disapprove part or all of the application and deny a
24 certificate of need;

25 (3) defer a decision, in order to obtain additional infor-
26 mation; or

27 (4) defer a decision for good cause if the deferral does
28 not prejudice or delay review of another application.

29 (b) The department shall send the final written findings and

1 decision to the applicant and to other persons who request a copy of
2 the findings and decision. If the final decision is to approve an
3 application, the department shall issue a certificate of need to the
4 applicant.

5 * Sec. 8. AS 18.07.081 is amended to read:

6 Sec. 18.07.081. PROCEEDINGS FOR MODIFICATION, SUSPENSION, AND
7 REVOCATION. (a) The department [OFFICE], a member of the public who
8 is substantially affected by activities authorized by the certificate,
9 [OR] another applicant for a certificate of need, a health care facil-
10 ity that is located in the health service area in which the activity
11 is proposed to occur and that either provides services similar to the
12 proposed activity or has indicated to the department in writing an
13 intention to engage in such services, or the Medicaid Rate Advisory
14 Commission created by AS 47.07.110 may initiate a hearing to obtain
15 modification, suspension, or revocation of an existing certificate of
16 need by filing an accusation with the department [COMMISSIONER] as
17 prescribed under AS 44.62.360. A revocation, modification, or suspen-
18 sion of an outstanding certificate may not be undertaken unless it is
19 in accordance with AS 44.62.330 -- 44.62.630.

20 (b) [THE CERTIFICATE HOLDER MAY OBTAIN MODIFICATION OF AN EXIST-
21 ING CERTIFICATE BY UTILIZING THE APPLICATION PROCEDURE ENUMERATED IN
22 REGULATIONS ADOPTED UNDER THIS CHAPTER.]

23 (c) A certificate of need shall be suspended if an accusation is
24 filed before the commencement of activities authorized under AS 18.-
25 07.079 [AS 18.07.041] that charges that factors upon which the certi-
26 ficate of need was issued have changed, or new factors have been
27 discovered that significantly alter the need for the activity au-
28 thorized. [A SUSPENSION OF A CERTIFICATE MAY NOT EXCEED 60 DAYS. AT
29 THE END OF THIS PERIOD OR SOONER, THE OFFICE SHALL REVOKE OR REINSTATE

1 THE CERTIFICATE.]

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

3 (1) the certificate holder [SPONSOR] has not shown con-
4 tinuing progress toward commencement of the activities authorized
5 under AS 18.07.079 within [AS 18.07.041 AFTER] six months after [OF]
6 issuance;

7 (2) the certificate holder [APPLICANT] fails, without good
8 cause, to complete activities authorized by the certificate;

9 (3) the certificate holder [SPONSOR] fails to comply with
10 the provisions of this chapter or regulations adopted under this
11 chapter;

12 (4) the certificate holder [SPONSOR] knowingly misrepre-
13 sents a material fact in obtaining the certificate;

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

16 (6) the certificate holder [SPONSOR] fails to provide
17 services authorized by the terms of the certificate.

18 (e) A person who files [MAY NOT FILE] an accusation seeking
19 suspension or revocation of a certificate of need under this section,
20 knowing that the charges stated in the accusation are untrue or that
21 the charges do not constitute grounds for revocation or suspension
22 under this chapter, is guilty of a class B misdemeanor.

23 * Sec. 9. AS 18.07.091 is repealed and reenacted to read:

24 Sec. 18.07.091. REPORTING REQUIREMENTS, PENALTIES, AND INJUNC-
25 TION. (a) The department shall require all health care facilities
26 operating in the state to periodically file reports required by the
27 department by regulation.

28 (b) The department shall require a certificate holder to file
29 with the department, periodically during the development stage and

1 annually after that until completion of the activity, a report demon-
2 strating that the activity is in compliance with all provisions of the
3 certificate of need.

4 (c) If the department finds that a person has substantially
5 failed or refused to comply with AS 18.07.031 - 18.07.111 or a regu-
6 lation adopted under those statutes, the department may take the
7 following actions:

8 (1) issue an order directing the person to stop the
9 questioned activity;

10 (2) deny, suspend, revoke, or modify a construction license
11 required under AS 18.20.020 as related to the questioned activity;

12 (3) suspend any payment to be made by the state to the
13 person for capital and operating expenses relating to the questioned
14 activity;

15 (4) deny, suspend, revoke, or modify a certificate of need;
16 or

17 (5) issue an order against a person who violates a
18 provision of AS 18.07.031 - 18.07.111 or a regulation adopted under
19 those statutes, imposing a civil penalty of not more than \$20,000.

20 (d) Before imposing any of the sanctions listed in (c) of this
21 section, the department shall give reasonable notice of and an oppor-
22 tunity for a hearing.

23 (e) Notwithstanding AS 44.62.330 - 44.62.630, if the department
24 finds that substantial failure or refusal of a person to comply with
25 AS 18.07.031 - 18.07.111 or a regulation adopted under those statutes
26 will have a significant and adverse effect upon the public interest,
27 the department may issue an order imposing any of the following con-
28 ditions:

29 (1) issue an order directing the person to stop the

1 questioned activity;

2 (2) suspend a construction license required under
3 AS 18.20.020 as related to the questioned activity; or

4 (3) suspend any payment to be made by the department to the
5 person for capital and operating expenses relating to the questioned
6 activity.

7 (f) Notwithstanding AS 44.62.330 - 44.62.630, an order under (e)
8 of this section becomes effective immediately upon service by the
9 department and remains in effect pending the decision after any hear-
10 ing that may have been requested unless the person served can demon-
11 strate to the department's satisfaction that the questioned activity
12 is not subject to the application and review requirements of
13 AS 18.07.031 - 18.07.111, or that the person would likely prevail on
14 the merits and that allowing the activity to continue is in the public
15 interest.

16 (g) Injunctive relief against a violation of AS 18.07.031 -
17 18.07.111 or a regulation adopted under those statutes may be obtained
18 from a court of competent jurisdiction by the department, a certifi-
19 cate holder who is adversely affected by the violation, or any member
20 of the public substantially and adversely affected by the violation.

21 * Sec. 10. AS 18.07.101 is amended to read:

22 Sec. 18.07.101. REGULATIONS. The department [COMMISSIONER]
23 shall adopt, in accordance with the Administrative Procedure Act
24 (AS 44.62), regulations that establish procedures under which a person
25 [SPONSORS] may apply [MAKE APPLICATION] for a certificate [CERTIFI-
26 CATES] of need required by this chapter, [AND THAT] govern the review
27 of those applications by the department [OFFICE], establish require-
28 ments for a uniform statewide system of reporting financial and other
29 operating data, establish reasonable fees for applications and other

1 services, and otherwise carry out the purposes of this chapter.

2 * Sec. 11. AS 18.07.111 is repealed and reenacted to read:

3 Sec. 18.07.111. DEFINITIONS. In this chapter

4 (1) "category of health services" means a service that is
5 recognized as a distinct service for the purposes of health care
6 facility licensure and certification under regulations adopted under
7 AS 18.20.010 - 18.20.130, except that "service" does not include the
8 lawful practice of a profession or vocation conducted independently of
9 a health care facility and in accordance with applicable licensing
10 laws of the state;

11 (2) "certificate" means a certificate of need;

12 (3) "certificate of need" means a written order of the
13 department that sets out the affirmative findings that a proposed
14 activity sufficiently satisfies the plans and criteria prescribed for
15 such an activity by this chapter and by department regulations, and
16 that permits the certificate holder to proceed with the activity;

17 (4) "commencement of activities" means, with the intent to
18 continue until it is completed,

19 (A) the visible commencement of actual operations, on
20 the ground, which is readily recognizable as such, for the con-
21 struction of a building, the alteration of the bed capacity of a
22 health care facility, or the provision for or deletion of an
23 existing category of health services to consumers; or

24 (B) a significant step toward acquisition of a health
25 care facility;

26 (5) "complete activities" means the substantial performance
27 of the work required to comply with the terms of issuance of the
28 certificate of need that all parties participating in those activities
29 have obligated themselves to perform;

1 (6) "construction" means excavation, erection, alteration,
2 modification, reconstruction, modernization, improvement, extension,
3 or other development by or on behalf of a health care facility, and
4 includes the lease or purchase of equipment;

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

7 (8) "health care facility" means an institutional health
8 service provider, whether public or private, whether a partnership or
9 corporation, whether organized for profit or not, and whether or not
10 licensed or required to be licensed in whole or in part by the state,
11 and includes a hospital, psychiatric hospital, substance abuse hospi-
12 tal, tuberculosis hospital, skilled nursing facility, kidney disease
13 treatment center (including freestanding hemodialysis units), inter-
14 mediate care facility, ambulatory surgical facility, freestanding
15 emergency care facility, osteopathic facility, independent diagnostic
16 laboratory, and central service facility; "health care facility" does
17 not include:

18 (A) an Alaska Pioneers' Home administered by the
19 Department of Administration under AS 44.21.020(10) and AS 47.-
20 25.010 - 47.25.100;

21 (B) the offices of private physicians or dentists,
22 whether in individual or group practice, occupied on a regular
23 basis to perform the range of diagnostic and treatment services
24 usually performed by physicians and dentists on an outpatient
25 basis;

26 (C) office buildings built by or on behalf of a health
27 care facility for the exclusive use of physicians, dentists, and
28 other practitioners of the healing arts, or other investments
29 made by or on behalf of a health care facility, unless capital

1 expenditures or operating expenses will be charged or reimbursed
2 in the future as costs for providing patient services offered by
3 a health care facility; and

4 (9) "person" means an individual, corporation, company,
5 partnership, firm, association, organization, business trust, estate,
6 or government entity, and includes a health care facility.

7 * Sec. 12. AS 18.20.050 is amended to read:

8 Sec. 18.20.050. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.
9 The department may deny, suspend, or revoke a license in a case in
10 which it finds that there has been a substantial failure to comply
11 with the requirements established under AS 08.64.336, AS 18.07.031 -
12 18.07.111, or AS 18.20.060 - 18.20.080.

13 * Sec. 13. AS 18.07.011 and 18.07.041 are repealed.

14 * Sec. 14. This Act takes effect immediately under AS 01.10.070(c).

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