

Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE HESS COMMITTEE

2 CS FOR HOUSE BILL NO. 399 (HESS)

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; abolishing the Statewide
8 Health Coordinating Council; and providing for an
9 effective date."

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

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

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

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

18 Sec. 18.07.021. STATE HEALTH PLANNING AND DEVELOPMENT [AGENCY].
19 The [OFFICE OF PLANNING AND RESEARCH IN THE] department is responsible
20 for [THE] state health planning and development, [AGENCY DESIGNATED
21 UNDER 42 U.S.C. 300m(b)(3). THE OFFICE] shall [PERFORM THE FUNCTIONS
22 ENUMERATED UNDER 42 U.S.C. 300m-2,] administer the certificate of need
23 program outlined in AS 18.07.031 - 18.07.111 [AS 18.07.041 - 18.07.-
24 111], and shall perform other functions prescribed in this chapter.

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 AS 18.07.031 is repealed and reenacted to read:

26 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 a rededication of

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

3 (2) alter or redistribute the bed capacity of a health care
4 facility by more than 10 beds or 10 percent of the number of beds in
5 the facility, whichever is fewer;

6 (3) add or eliminate a category of health services to or
7 from those provided by the health care facility; or

8 (4) acquire a health care facility at a cost of \$1,000,000
9 or more.

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

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

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

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

26 * Sec. 6. AS 18.07.061 is amended by adding new subsections to read:

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

29 (1) evidence, of the type the department may require by

1 regulation, that the transferee is able to assume ownership or
2 operation of the health care facility and to provide the appropriate
3 health services;

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

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

7 (c) Transfer of a certificate is subject to conditions the
8 department considers necessary.

9 * Sec. 7. AS 18.07.071 is repealed and reenacted to read:

10 Sec. 18.07.071. EMERGENCY CERTIFICATES. (a) The department
11 shall expedite review of an application for a certificate of need
12 under AS 18.07.031(1) that is required to

13 (1) eliminate or prevent imminent safety hazards as defined
14 by a federal, state, or local fire, building, or life safety code or
15 regulation;

16 (2) comply with state licensure standards; or

17 (3) comply with accreditation standards, compliance with
18 which is required to receive federal reimbursement.

19 (b) An application approved under (a) of this section may be
20 approved only to the extent that the capital expenditure is required
21 to eliminate or prevent the hazards or to comply with the standards
22 described in (a) of this section.

23 * Sec. 8. AS 18.07 is amended by adding a new section to read:

24 Sec. 18.07.079. FINAL DECISION. (a) Within 150 days after it
25 determines that it has received a complete application, the department
26 shall take one or more of the following actions:

27 (1) approve part or all of the application and issue a
28 certificate of need that includes conditions that the department
29 considers appropriate; the conditions must be directly related to the

1 activities for which the application was made;

2 (2) deny a certificate of need;

3 (3) recommend modifications to the application; if the
4 applicant agrees to modify the application, the department may defer a
5 final decision on the application for 30 days after receiving the
6 modified application and all additional information to support the
7 modifications; deferral for more than 30 days under this paragraph may
8 be made by the department only after written findings that there is
9 good cause for deferring the decision and that deferral is in the
10 public interest.

11 (b) The department shall send the final written findings and
12 decision to the applicant and to other persons who request a copy of
13 the findings and decision. If the final decision is to approve an
14 application, the department shall issue a certificate of need to the
15 applicant.

16 * Sec. 9. AS 18.07.081(a) is amended to read:

17 (a) The department [OFFICE], a member of the public who is
18 substantially affected by activities authorized by the certificate,
19 [OR] another applicant for a certificate of need, or a health care
20 facility that either provides services similar to the proposed ac-
21 tivity or has indicated to the department in writing within the year
22 preceding the decision to grant the certificate an intention to pro-
23 vide similar services to a health service population that includes all
24 or part of the health service population served under the certificate
25 of need may request [INITIATE] a hearing to obtain modification,
26 suspension or revocation of an existing certificate of need by filing
27 an accusation with the department [COMMISSIONER] as prescribed under
28 AS 44.62.360. A revocation, modification, or suspension of an out-
29 standing certificate may not be undertaken unless it is in accordance

1 with AS 44.62.330 - 44.62.630.

2 * Sec. 10. AS 18.07.081(c) is amended to read:

3 (c) A certificate of need shall be suspended if an accusation is
4 filed before the commencement of activities authorized under AS 18.-
5 07.079 [AS 18.07.041] that charges that factors upon which the certif-
6 icate of need was issued have changed [,] or new factors have been
7 discovered that significantly alter the need for the activity au-
8 thorized. [A SUSPENSION OF A CERTIFICATE MAY NOT EXCEED 60 DAYS. AT
9 THE END OF THIS PERIOD OR SOONER, THE OFFICE SHALL REVOKE OR REINSTATE
10 THE CERTIFICATE].

11 * Sec. 11. AS 18.07.081(d) is amended to read:

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

13 (1) the certificate holder [SPONSOR] has not shown continu-
14 ing progress toward commencement of the activities authorized under
15 AS 18.07.079 within one year after [AS 18.07.041 AFTER SIX MONTHS OF]
16 issuance;

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

19 (3) the certificate holder [SPONSOR] fails to comply with
20 the provisions of this chapter or regulations adopted under this
21 chapter;

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

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

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

28 * Sec. 12. AS 18.07.081(e) is amended to read:

29 (e) A person who files [MAY NOT FILE] an accusation seeking

1 suspension or revocation of a certificate of need under this section,
2 knowing that the charges stated in the accusation are untrue or that
3 the charges do not constitute grounds for revocation or suspension
4 under this chapter, is guilty of a class B misdemeanor.

5 * Sec. 13. AS 18.07.091 is repealed and reenacted to read:

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

10 (b) The department shall require a certificate holder to file
11 with the department, periodically during the development stage and
12 annually after that until completion of the activity authorized under
13 AS 18.07.031, a report demonstrating that the activity is in compli-
14 ance with all provisions of the certificate of need.

15 (c) If the department finds that a person has substantially
16 failed or refused to comply with AS 18.07.031 - 18.07.111 or a regu-
17 lation adopted under those sections, the department may take one or
18 more of the following actions:

19 (1) issue an order directing the person to stop the ques-
20 tioned activity;

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

23 (3) suspend a payment to be made by the department to the
24 person for capital and operating expenses relating to the questioned
25 activity;

26 (4) deny, suspend, revoke, or modify a certificate of need;
27 or

28 (5) issue an order against a person who violates a pro-
29 vision of AS 18.07.031 - 18.07.111 or a regulation adopted under those

1 sections imposing a civil penalty of not more than \$20,000.

2 (d) Before imposing a sanction listed in (c) of this section,
3 the department shall give reasonable notice of and an opportunity for
4 a hearing.

5 (e) Notwithstanding AS 44.62.330 - 44.62.630, if the department
6 finds that there will be a significant and adverse effect upon the
7 public interest caused by substantial failure or refusal of a person
8 to comply with AS 18.07.031 - 18.07.111 or a regulation adopted under
9 those sections, the department may issue an order that does one or
10 more of the following:

11 (1) directs the person to stop the questioned activity;

12 (2) suspends a construction license required under AS 18.-
13 20.020 as related to the questioned activity; or

14 (3) suspends a payment to be made by the department to the
15 person for capital and operating expenses relating to the questioned
16 activity.

17 (f) Notwithstanding AS 44.62.330 - 44.62.630, an order under (e)
18 of this section takes effect immediately upon service by the depart-
19 ment and remains in effect pending the decision after any hearing that
20 may have been requested unless the person served can demonstrate to
21 the department's satisfaction that the questioned activity is not
22 subject to the application and review requirements of AS 18.07.031 -
23 18.07.111, or that the person would likely prevail on the merits and
24 that allowing the activity to continue is in the public interest.

25 (g) Injunctive relief against a violation of AS 18.07.031 -
26 18.07.111 or a regulation adopted under those sections may be obtained
27 from a court of competent jurisdiction by the department, a certifi-
28 cate holder who is adversely affected by the violation, or a member of
29 the public substantially and adversely affected by the violation.

1 * Sec. 14. AS 18.07.101 is amended to read:

2 Sec. 18.07.101. REGULATIONS. The department [COMMISSIONER]
3 shall adopt, in accordance with the Administrative Procedure Act
4 (AS 44.62), regulations that establish procedures under which a person
5 [SPONSORS] may apply [MAKE APPLICATION] for a certificate [CERTIFI-
6 CATES] of need required by this chapter, establish the amount of
7 variation that may occur in an activity authorized by a certificate of
8 need without requiring a modification of the certificate, [AND THAT]
9 govern the review of those applications by the department [OFFICE],
10 establish requirements for a uniform statewide system of reporting
11 financial and other operating data, establish reasonable fees for
12 applications and other services, and otherwise carry out the purposes
13 of this chapter.

14 * Sec. 15. AS 18.07.111 is repealed and reenacted to read:

15 Sec. 18.07.111. DEFINITIONS. In this chapter

16 (1) "category of health services" means a service that is
17 recognized as a distinct service for the purposes of health care
18 facility licensure and certification under regulations adopted under
19 AS 18.20.010 - 18.20.130, except that "service" does not include the
20 lawful practice of a profession or vocation conducted independently of
21 a health care facility and in accordance with applicable licensing
22 laws of the state;

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

24 (3) "certificate of need" means a written order of the
25 department that sets out the affirmative findings that a proposed
26 activity sufficiently satisfies the plans and criteria prescribed for
27 such an activity by this chapter and by department regulations and
28 that permits the certificate holder to proceed with the activity;

29 (4) "commencement of activities" means, with the intent to

1 continue until it is completed,

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

7 (B) a significant step toward acquisition of a health
8 care facility;

9 (5) "complete activities" means the substantial performance
10 of the work required to comply with the terms of issuance of the
11 certificate of need that all parties participating in those activities
12 have obligated themselves to perform;

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

17 (7) "department" means the Department of Health and Social
18 Services;

19 (8) "health care facility" means an institutional health
20 service provider, whether public or private, whether a partnership or
21 corporation, whether organized for profit or not, and whether or not
22 licensed or required to be licensed in whole or in part by the state,
23 and includes a hospital, psychiatric hospital, substance abuse hospi-
24 tal, tuberculosis hospital, skilled nursing facility, kidney disease
25 treatment center (including freestanding hemodialysis units), inter-
26 mediate care facility, ambulatory surgical facility, freestanding
27 emergency care facility, osteopathic facility, independent diagnostic
28 laboratory, and central service facility; "health care facility" does
29 not include:

1 (A) an Alaska Pioneers' Home administered by the
2 Department of Administration under AS 44.21.020(10) and
3 AS 47.25.010 - 47.25.100;

4 (B) the offices of private physicians or dentists,
5 whether in individual or group practice, occupied on a regular
6 basis to perform the range of diagnostic and treatment services
7 usually performed by physicians and dentists on an outpatient
8 basis;

9 (C) office buildings built or leased by or on behalf
10 of a health care facility for the exclusive use of physicians,
11 dentists, and other practitioners of the healing arts, or other
12 investments made by or on behalf of a health care facility,
13 unless capital expenditures or operating expenses will be charged
14 or reimbursed in the future as costs for providing patient ser-
15 vices offered by the health care facility; and

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

19 * Sec. 16. AS 18.20.050 is amended to read:

20 Sec. 18.20.050. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.
21 The department may deny, suspend, or revoke a license in a case in
22 which it finds that there has been a substantial failure to comply
23 with the requirements established under AS 08.64.336, AS 18.07.031 -
24 18.07.111, or AS 18.20.060 - 18.20.080.

25 * Sec. 17. AS 44.29.100 is amended to read:

26 Sec. 44.29.100. ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE.
27 There is established in the Department of Health and Social Services
28 an advisory board on alcoholism and drug abuse. [THE BOARD SHALL
29 FUNCTION AS A STANDING COMMITTEE OF THE STATEWIDE HEALTH COORDINATING

1 COUNCIL ESTABLISHED UNDER AS 18.07.011.]

2 * Sec. 18. AS 47.30.475(b) is amended to read:

3 (b) Money available under this section shall be awarded by the
4 department to applicants on the basis of community need, but only if
5 the award is consistent with the annual implementation plan developed
6 under 42 U.S.C. 3001-2(b)(2) (National Health Resources Planning and
7 Development Act of 1974) by the health systems agency for the health
8 system area in which the applicant is located [AND THE STATE HEALTH
9 PLAN DEVELOPED BY THE STATEWIDE HEALTH COORDINATING COUNCIL UNDER 42
10 U.S.C. 300m-3(c)(2)(A),] and only after consideration of comment and
11 advice of the Advisory Board on Alcoholism and Drug Abuse. In award-
12 ing grants, the department shall further consider the amount of money
13 that is available for all applications and whether an application
14 would contribute to the wise development of a comprehensive program of
15 alcoholic and drug abuse rehabilitation and prevention.

16 * Sec. 19. AS 18.07.011, 18.07.041, 18.07.081(b); AS 18.08.020(2),
17 18.08.090(11); and AS 18.26.030(a)(4)(B) are repealed.

18 * Sec. 20. This Act takes effect immediately under AS 01.10.070(c).