

Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR HOUSE BILL NO. 399 (Finance) am
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 AS 18.07.031 is repealed and reenacted to read: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 of \$1,000,000 or more for

1 construction of a health care facility;

2 (2) convert a building, in whole or in part, for use as a
3 health care facility if the fair market value of the converted part of
4 the building is greater than \$500,000 and the sum of the fair market
5 value plus additional capital expenditures made to facilitate the
6 conversion equals or exceeds \$1,000,000;

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

10 (4) add or eliminate a category of health services to or
11 from those provided by the health care facility; or

12 (5) acquire a health care facility at a cost of \$1,000,000
13 or more.

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

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

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

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

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

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

4 (1) evidence, of the type the department may require by
5 regulation, that the transferee is able to assume ownership or opera-
6 tion of the health care facility and to provide the appropriate health
7 services;

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

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

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

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

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

17 (1) eliminate or prevent imminent safety hazards as defined
18 by a federal, state, or local fire, building, or life safety code or
19 regulation;

20 (2) comply with state licensure standards; or

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

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

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

28 Sec. 18.07.079. FINAL DECISION. (a) Within 150 days after it
29 determines that it has received a complete application, the department

1 shall take one or more of the following actions:

2 (1) approve part or all of the application and issue a
3 certificate of need that includes conditions that the department
4 considers appropriate; the conditions must be directly related to the
5 activities for which the application was made;

6 (2) deny a certificate of need;

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

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

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

21 (a) The department [OFFICE], a member of the public who is
22 substantially affected by activities authorized by the certificate,
23 [OR] another applicant for a certificate of need, or a health care
24 facility that either provides services similar to the proposed ac-
25 tivity or has indicated to the department in writing within the year
26 preceding the decision to grant the certificate an intention to pro-
27 vide similar services to a health service population that includes all
28 or part of the health service population served under the certificate
29 of need may request [INITIATE] a hearing to obtain modification,

1 suspension or revocation of an existing certificate of need by filing
2 an accusation with the department [COMMISSIONER] as prescribed under
3 AS 44.62.360. Except for AS 18.07.091(e) and 18.07.091(f), a [A]
4 revocation, modification, or suspension of an outstanding certificate
5 may not be undertaken unless it is in accordance with AS 44.62.330 -
6 44.62.630.

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

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

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

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

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

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

24 (3) the certificate holder [SPONSOR] fails to comply with
25 the provisions of this chapter or regulations adopted under this
26 chapter;

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

29 (5) the facts charged in an accusation filed under (c) of

1 this section are established; or

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

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

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

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

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

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

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

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

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

28 (3) suspend a payment to be made by the department to the
29 person for capital and operating expenses relating to the questioned

1 activity;

2 (4) deny, suspend, revoke, or modify a certificate of need;
3 or

4 (5) issue an order against a person who violates a pro-
5 vision of AS 18.07.031 - 18.07.111 or a regulation adopted under those
6 sections imposing a civil penalty of not more than \$20,000.

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

10 (e) In accordance with AS 18.07.081(a), if the department finds
11 that there will be a significant and adverse effect upon the public
12 interest caused by substantial failure or refusal of a person to
13 comply with AS 18.07.031 - 18.07.111 or a regulation adopted under
14 those sections, the department may issue an order that does one or
15 more of the following:

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

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

19 (3) suspends a payment to be made by the department to the
20 person for capital and operating expenses relating to the questioned
21 activity.

22 (f) In accordance with AS 18.07.081(a), an order under (e) of
23 this section takes effect immediately upon service by the department
24 and remains in effect pending the decision after any hearing that may
25 have been requested unless the person served can demonstrate to the
26 department's satisfaction that the questioned activity is not subject
27 to the application and review requirements of AS 18.07.031 -
28 18.07.111, or that the person would likely prevail on the merits and
29 that allowing the activity to continue is in the public interest.

1 (g) Injunctive relief against a violation of AS 18.07.031 -
2 18.07.111 or a regulation adopted under those sections may be obtained
3 from a court of competent jurisdiction by the department, a certifi-
4 cate holder who is adversely affected by the violation, or a member of
5 the public substantially and adversely affected by the violation.

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

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

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

20 Sec. 18.07.111. DEFINITIONS. In this chapter

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

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

29 (3) "certificate of need" means a written order of the

1 department that sets out the affirmative findings that a proposed
2 activity sufficiently satisfies the plans and criteria prescribed for
3 such an activity by this chapter and by department regulations and
4 that permits the certificate holder to proceed with the activity;

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

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

12 (B) a significant step toward acquisition of a health
13 care facility;

14 (5) "complete activities" means the substantial performance
15 of the work required to comply with the terms of issuance of the
16 certificate of need that all parties participating in those activities
17 have obligated themselves to perform;

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

22 (7) "department" means the Department of Health and Social
23 Services;

24 (8) "health care facility" means an institutional health
25 service provider licensed in whole or in part by the state under
26 AS 18.20.010 - 18.20.130, whether public or private, whether a part-
27 nership or corporation, whether organized for profit or not, and
28 includes a hospital, psychiatric hospital, substance abuse hospital,
29 tuberculosis hospital, skilled nursing facility, kidney disease

1 treatment center (including freestanding hemodialysis units), inter-
2 mediate care facility, ambulatory surgical facility, freestanding
3 emergency care facility, osteopathic facility, independent diagnostic
4 laboratory, and central service facility; "health care facility" does
5 not include:

6 (A) an Alaska Pioneers' Home administered by the
7 Department of Administration under AS 44.21.020(10) and AS 47.-
8 25.010 - 47.25.100;

9 (B) the offices of private physicians or dentists,
10 whether in individual or group practice, occupied on a regular
11 basis to perform the range of diagnostic and treatment services
12 usually performed by physicians and dentists on an outpatient
13 basis;

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

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

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

25 Sec. 18.20.050. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

26 The department may deny, suspend, or revoke a license in a case in
27 which it finds that there has been a substantial failure to comply
28 with the requirements established under AS 08.64.336, AS 18.07.031 -
29 18.07.111. or AS 18.20.060 - 18.20.080.

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

2 Sec. 44.29.100. ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE.
3 There is established in the Department of Health and Social Services
4 an advisory board on alcoholism and drug abuse. [THE BOARD SHALL
5 FUNCTION AS A STANDING COMMITTEE OF THE STATEWIDE HEALTH COORDINATING
6 COUNCIL ESTABLISHED UNDER AS 18.07.011.]

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

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

21 * Sec. 19. AS 18.07.011, 18.07.041, 18.07.081(b); AS 18.08.020(2),
22 18.08.090(11); and AS 18.26.030(a)(4)(B) are repealed.

23 * Sec. 20. REPORT. The Department of Health and Social Services shall
24 report to the legislature by February 1, 1992, with an evaluation of the
25 effectiveness of the certificate-of-need process under AS 18.07 in prevent-
26 ing unnecessary construction of health care facilities and saving health
27 care costs that might otherwise have been incurred in the state. The
28 report must also describe any adverse effects of the certificate-of-need
29 process on the health care delivery system in the state.

1 * Sec. 21. This Act takes effect immediately under AS 01.10.070(c).