

SENATE BILL NO. 84

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR DUNCAN

Introduced: 1/23/91
Referred: HESS and Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state coordination of health planning and development; abolishing the
2 Statewide Health Coordinating Council; and providing for an effective date."

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

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

5 Sec. 18.07.005. LEGISLATIVE PURPOSE. It is the purpose of this chapter to create
6 a rational framework for the planning and development of all health care services in the state to
7 ensure promotion and protection of public health, provide equitable access to health services, and
8 avoid unnecessary increases in health care costs.

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

10 Sec. 18.07.021. STATE HEALTH PLANNING AND DEVELOPMENT [AGENCY].
11 The [OFFICE OF PLANNING AND RESEARCH IN THE] department is responsible for [THE]
12 state health planning and development, [AGENCY DESIGNATED UNDER 42 U.S.C.
13 300m(b)(3). THE OFFICE] shall [PERFORM THE FUNCTIONS ENUMERATED UNDER 42
14 U.S.C. 300m-2,] administer the certificate of need program outlined in AS 18.07.031 - 18.07.111

1 [AS 18.07.041 - 18.07.111], and shall perform other functions prescribed in this chapter.

2 * **Sec. 3.** AS 18.07.031 is repealed and reenacted to read:

3 Sec. 18.07.031. **CERTIFICATE OF NEED REQUIRED.** (a) Unless authorized under
4 the terms of a certificate of need issued by the department, a person may not

5 (1) make a capital expenditure of \$1,000,000 or more for construction of a health
6 care facility;

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

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

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

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

16 (b) The dollar thresholds in (a) of this section apply to total anticipated costs. Costs of
17 constructing or acquiring a health care facility may not be artificially divided, fragmented, or
18 structured to circumvent the requirements of this section.

19 * **Sec. 4.** AS 18.07.035 is amended to read:

20 Sec. 18.07.035. **APPLICATION AND FEES.** Application for a certificate of need shall
21 be made to the department upon a form provided by the department and must contain the
22 information the department requires to reach a decision under AS 18.07.031 - 18.07.111
23 [AS 18.07.041 - 18.07.111]. Each application for a certificate of need must be accompanied by
24 an application fee established by the department by regulation.

25 * **Sec. 5.** AS 18.07.051 is amended by adding a new subsection to read:

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

28 * **Sec. 6.** AS 18.07.061 is amended to read:

29 Sec. 18.07.061. **MODIFICATION AND TERMINATION OF ACTIVITIES.** The
30 certificate holder shall apply to the department [OFFICE] for a modification of the certificate
31 [BEFORE TERMINATING PART OF THE ACTIVITIES AUTHORIZED BY THE TERMS OF

1 ISSUANCE, BUT THE CERTIFICATE HOLDER IS NOT REQUIRED TO OBTAIN THE
2 ACQUIESCENCE OF THE OFFICE] before transferring the certificate or modifying or
3 terminating all or part of the activities authorized by the certificate. If a certificate holder
4 intends to terminate [TERMINATES] all of the activities authorized by a certificate, the
5 certificate holder is required to apply to [NOTIFY] the department [OFFICE] 60 days before
6 termination and to surrender the certificate to the department [OFFICE] within 30 days after
7 [OF] termination.

8 * Sec. 7. AS 18.07.061 is amended by adding new subsections to read:

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

11 (1) evidence, of the type the department may require by regulation, that the
12 transferee is able to assume ownership or operation of the health care facility and to provide the
13 appropriate health services;

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

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

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

18 * Sec. 8. AS 18.07.071 is repealed and reenacted to read:

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

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

23 (2) comply with state licensure standards; or

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

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

29 * Sec. 9. AS 18.07 is amended by adding a new section to read:

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

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

4 (2) deny a certificate of need;

5 (3) recommend modifications to the application; if the applicant agrees to modify
6 the application, the department may defer a final decision on the application for 30 days after
7 receiving the modified application and all additional information to support the modifications;
8 deferral for more than 30 days under this paragraph may be made by the department only after
9 written findings that there is 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 decision to the applicant and
12 to other persons who request a copy of the findings and decision. If the final decision is to
13 approve an application, the department shall issue a certificate of need to the applicant.

14 * **Sec. 10.** AS 18.07.081(a) is amended to read:

15 (a) The department [OFFICE], a member of the public who is substantially affected by
16 activities authorized by the certificate, [OR] another applicant for a certificate of need, or a
17 health care facility that either provides services similar to the proposed activity or has
18 indicated to the department in writing within the year preceding the decision to grant the
19 certificate an intention to provide similar services to a health service population that
20 includes all or part of the health service population served under the certificate of need may
21 request [INITIATE] a hearing to obtain modification, suspension or revocation of an existing
22 certificate of need by filing an accusation with the department [COMMISSIONER] as prescribed
23 under AS 44.62.360. A revocation, modification, or suspension of an outstanding certificate may
24 not be undertaken unless it is in accordance with AS 44.62.330 - 44.62.630.

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

26 (c) A certificate of need shall be suspended if an accusation is filed before the
27 commencement of activities authorized under AS 18.07.079 [AS 18.07.041] that charges that
28 factors upon which the certificate of need was issued have changed [,] or new factors have been
29 discovered that significantly alter the need for the activity authorized. [A SUSPENSION OF A
30 CERTIFICATE MAY NOT EXCEED 60 DAYS. AT THE END OF THIS PERIOD OR
31 SOONER, THE OFFICE SHALL REVOKE OR REINSTATE THE CERTIFICATE].

1 * **Sec. 12.** AS 18.07.081(d) is amended to read:

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

3 (1) the certificate holder [SPONSOR] has not shown continuing progress toward
4 commencement of the activities authorized under AS 18.07.079 within one year after
5 [AS 18.07.041 AFTER SIX MONTHS OF] issuance;

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

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

10 (4) the certificate holder [SPONSOR] knowingly misrepresents a material fact
11 in obtaining the certificate;

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

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

16 * **Sec. 13.** AS 18.07.081(e) is amended to read:

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

21 * **Sec. 14.** AS 18.07.091 is repealed and reenacted to read:

22 Sec. 18.07.091. REPORTING REQUIREMENTS, PENALTIES, AND INJUNCTION.

23 (a) The department shall require all health care facilities operating in the state to periodically
24 file reports required by the department by regulation.

25 (b) The department shall require a certificate holder to file with the department,
26 periodically during the development stage and annually after that until completion of the activity
27 authorized under AS 18.07.031, a report demonstrating that the activity is in compliance with all
28 provisions of the certificate of need.

29 (c) If the department finds that a person has substantially failed or refused to comply
30 with AS 18.07.031 - 18.07.111 or a regulation adopted under those sections, the department may
31 take one or more of the following actions:

- 1 (1) issue an order directing the person to stop the questioned activity;
2 (2) deny, suspend, revoke, or modify a construction license required under
3 AS 18.20.020 as related to the questioned activity;
4 (3) suspend a payment to be made by the department to the person for capital and
5 operating expenses relating to the questioned activity;
6 (4) deny, suspend, revoke, or modify a certificate of need; or
7 (5) issue an order against a person who violates a provision of AS 18.07.031 -
8 18.07.111 or a regulation adopted under those sections imposing a civil penalty of not more than
9 \$20,000.

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

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

- 16 (1) directs the person to stop the questioned activity;
17 (2) suspends a construction license required under AS 18.20.020 as related to the
18 questioned activity; or
19 (3) suspends a payment to be made by the department to the person for capital
20 and operating expenses relating to the questioned activity.

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

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

31 * Sec. 15. AS 18.07.101 is amended to read:

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

10 * Sec. 16. AS 18.07.111 is repealed and reenacted to read:

11 Sec. 18.07.111. DEFINITIONS. In this chapter

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

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

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

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

24 (A) the visible commencement of actual operations, on the ground, which
25 is readily recognizable as such, for the construction of a building, the alteration of the bed
26 capacity of a health care facility, or the provision for or deletion of an existing category
27 of health services to consumers; or

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

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

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

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

5 (8) "health care facility" means an institutional health service provider licensed
6 in whole or in part by the state under AS 18.20.010 - 18.20.130, whether public or private,
7 whether a partnership or corporation, whether organized for profit or not, and includes a hospital,
8 psychiatric hospital, substance abuse hospital, tuberculosis hospital, skilled nursing facility,
9 kidney disease treatment center (including freestanding hemodialysis units), intermediate care
10 facility, ambulatory surgical facility, freestanding emergency care facility, osteopathic facility,
11 independent diagnostic laboratory, and central service facility; "health care facility" does not
12 include

13 (A) an Alaska Pioneers' Home administered by the Department of
14 Administration under AS 44.21.020(10) and AS 47.55;

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

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

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

26 * Sec. 17. AS 18.20.050 is amended to read:

27 Sec. 18.20.050. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. The
28 department may deny, suspend, or revoke a license in a case in which it finds that there has been
29 a substantial failure to comply with the requirements established under AS 08.64.336,
30 AS 18.07.031 - 18.07.111, or AS 18.20.060 - 18.20.080. The license of a nursing facility, as
31 defined in AS 18.20.390, also may be suspended or revoked by the department under

1 AS 18.20.310(a)(5).

2 * **Sec. 18.** AS 44.29.100 is amended to read:

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

7 * **Sec. 19.** AS 47.30.475(b) is amended to read:

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

19 * **Sec. 20.** AS 18.07.011, 18.07.041, 18.07.081(b); AS 18.08.020(2), 18.08.090(11); and
20 AS 18.26.030(a)(4)(B) are repealed.

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