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COMMITTEE REPORT
SENATE

2/15/82

FURTHER: None

Date: 4-7-82

Mr. President: HEALTH, EDUCATION & SOCIAL SERVICES
The Committee on HEALTH, EDUCATION & SOCIAL SERVICES has had SB 760

adding amendments to statutory references to the National Health Planning and Resources Development Act of 1974

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 760 same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]
CHAIRMAN

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT

cc Frederick M. Hanna
Kare Williams

Phoebe

Thanks

Attached to provide language to meet
our additional "gitch"

SUBJ.: Clean up language for SR760 Date 4/8/82	
FROM: Name P. Frudenberg Dept./Div./Sect. DHSS/DSHPD	TO: Name Nancy Kutzler Dept./Div./Sect. Dr. Charles Parn's Office
Telephone 3038	Mail Stop

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF STATE HEALTH PLANNING & DEVELOPMENT

JAY S. HARMOND, GOVERNOR

POUCH H 01A
JUNEAU, ALASKA 99811
PHONE: 465-3037

April 8, 1982

DOCUMENT NO. 133-82

The Honorable Charles Parr
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Parr:

In my testimony on Senate Bill 760 yesterday, I did not specifically note the concerns the Department has recently raised regarding the certificate of need coverage of acquisition of health care facilities. Attached is a letter of April 7 from Commissioner Beirne to House HESS Chairman Mike Beirne which details this technical point.

I will be happy to further discuss this issue with your staff at your request.

Thank you for your consideration in this matter.

Sincerely,



Phoebe A. Lindsey
Director

Enclosure

cc: Helen D. Beirne
Frederick McGinnis
Dave Williams

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

JAY S. JARROLD, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

file
HB 195

DOCUMENT NO. 130-82

April 7, 1982

The Honorable Mike Beirne
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Beirne:

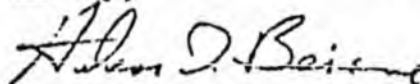
We appreciate the hearing held by your committee on House Bill 195 on March 3, 1982. Since that time, we have provided to your committee information on the potential federal fund losses to Alaska if our State Health Planning and Development Agency loses its designation because its certificate of need program does not meet federal standards (see our letter of March 23, 1982).

In addition to the amendments we have offered to House Bill 195, We have had further discussion within the Department on the section of the position paper we presented to you which deals with coverage of facility acquisitions. Our position paper indicates we would, in accordance with federal provisions develop revised regulations to exempt from review those acquisitions which do not involve a change in the facility's bed capacity, the addition of a new service, or the elimination of an existing service.

Our intention to exempt "routine" acquisitions was based on an assumption that the acquisition price would reflect fair market appraisals. In instances where the proposed purchase price would exceed fair market appraisals, we feel that such acquisitions could not be exempt simply because of the potential impact on increased patient charges. We would therefore propose to develop revised regulations to exempt routine acquisitions where the purchase price does not exceed the average of three certified appraisals of the fair market value.

We would be happy to discuss this modification to our position or any other aspects of House Bill 195 with you at your request.

Sincerely,



Helen D. Beirne
Commissioner

cc: Frederick McGinnis
Phoebe A. Lindsey

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF STATE HEALTH PLANNING & DEVELOPMENT

JAY S. HAMMOND, GOVERNOR

POUCH H 01A
JUNEAU, ALASKA 99811
PHONE: 465-3037

DOCUMENT NO. 124-82

April 1, 1982

Nancy Dietrich
Office of Senator Charles Parr
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Nancy:

Thank you for your request to provide additional language to Senate Bill 760, as our position paper indicated we would be happy to do. We are pleased that SB 760, in its current form, incorporates the capability to raise the certificate of need thresholds. The other amendments we would suggest would bring AS 18.07 into full compliance with federal requirements and remove the threat of financial sanction. These additional revisions have been developed with the Department of Law. The Department of Law advised that a simple reference to the amended public law would not be adequate but that the additional language which follows would be required to bring the Alaska certificate of need program into full compliance.

Section 2

The [office] state agency shall perform the functions enumerated under sec. 1523, P.L. 93-641 as amended by P.L. 96-79 and P.L. 97-35, administer the certificate of need program outlined in AS 18.07.041 18.07.117 for a health care facility including a rehabilitation facility, and other functions prescribed in this chapter.

Section 18.07.031 needs to be amended as follows:

Section 18.07.031. CERTIFICATE OF NEED REQUIRED.

(a) No person may undertake the following unless authorized under the terms of a certificate of need or exempt from the requirement for a certificate of need in accordance with this chapter [ISSUED BY THE OFFICE]:

- (1) construction of a health care facility;
- (2) alteration of the bed capacity of a health care facility;
- (3) addition or elimination of a category of health services provided by a health care facility;

- (4) acquisition of major medical equipment; and
 - (5) acquisition of an existing health care facility.
- (b) This section applies to a health care facility controlled by a health maintenance organization or an ambulatory care facility controlled by a health maintenance organization only if:
- (1) the organization or facility offers inpatient health care services or acquires major medical equipment for use primarily for in-patient health care; and
 - (2) the department does not grant the organization or facility an exemption under AS 18.07.032.

The issue of exemption needs further specification and we would suggest the addition of a new section, as follows:

Sec. 18.07.032. EXEMPTION FROM THE REQUIREMENT FOR A CERTIFICATE OF NEED. (a) A person may be exempt from the requirements of AS 18.07.031 only if the person applies to the department for the exemption at least 30 days before the person agrees to spend money for the proposed activity or contracts for the proposed activity.

- (b) The department shall grant an exemption if the application is made as provided in (a) of this section and the exemption is requested.
- (1) to acquire an existing health care facility if the services or bed capacity of the facility are not changed;
 - (2) to acquire major medical equipment which is not owned by or located in a health care facility and is not used to provide services for inpatients of a hospital;
 - (3) to provide inpatient institutional health services by
 - (A) a health maintenance organization if
 - (i) the organization has, in the service area of the organization, an enrollment of at least 50,000 individuals,
 - (ii) the facility in which the service is provided is geographically located so that the service is reasonably accessible to the individuals enrolled with the organization, and
 - (iii) at least 75 percent of the patients who can reasonably be expected to receive the health service are individuals enrolled with the organization;

- (B) a health care facility if
 - (i) the health care facility primarily provides inpatient services,
 - (ii) the facility is controlled by a health maintenance organization meeting the enrollment requirements set out in (A) of this paragraph, and
 - (iii) the location and expected use of the facility meet the requirements set out in (A) of this paragraph;
- (C) a health care facility, or part of it, if
 - (i) the facility is leased by a health maintenance organization meeting the enrollment requirements set out in (A) of this paragraph,
 - (ii) at least 15 years remain in the term of the lease, and
 - (iii) the location and expected use of the facility meet the requirements set out in (A) of this paragraph.
- (c) If a proposed health care facility, or part of it, does not provide institutional health services by the date it files an application for exemption for the facility, the facility shall meet the requirements of (b)(3) of this section at the time the facility first provides the service. The department shall approve the application for exemption if it is determined that the applicable requirements of (b)(3) of this section are met.
- (d) An exemption granted under (b)(3) of this section does not, with respect to a health care facility or medical equipment involved in the exemption, apply to:
 - (1) a sale or lease by the recipient of the exemption after the exemption is granted;
 - (2) the acquisition of a controlling interest in the facility or equipment after the exemption is granted;
 - (3) the use by any person other than the lessee of leased facilities described in (b)(3)(C) of this section after the exemption is granted.

To remain consistent with other "cosmetic" changes noted in our position paper, sections 18.07.041 and 18.07.061 and 18.07.081 could be amended so that the word department is used in place of OFFICE and the words of need follow the word certificate, as appropriate.

To clear up confusions we have had regarding temporary and emergency certificates, we would propose the following amendment to section 18.07.071:

Sec. 18.07.071. EMERGENCY AND TEMPORARY [TEMPORARY AND EMERGENCY] CERTIFICATES OF NEED. (a) The department [OFFICE] shall grant a sponsor an emergency certificate of need for the construction of a health care facility, health maintenance organization, rehabilitation facility, or ambulatory care facility if the facility or service:

- (1) needed and consistent with the state health plan;
 - (2) is required to eliminate or prevent immediate safety hazards as defined by federal, state or local fire, building or life safety codes or regulations, or
 - (3) is required to comply with state licensure standards or with accreditation standards necessary for the receipt or reimbursement under Title XVIII of the Social Security Act (42 USC 1395) or payments under the state plan for medical assistance approved under Title XIX of the Social Security Act (42 USC 1396) [FOR WHICH A CERTIFICATE IS REQUIRED UNDER AS 18.07.041 IF THE SPONSOR SHOWS, BY AFFIDAVIT OR FORMAL HEARING, THAT THE ACT OF CONSTRUCTION CONSISTS OF EFFECTING EMERGENCY REPAIRS].
- (b) The department [OFFICE] may grant a sponsor a temporary certificate of need for the temporary operation of a category of health service, if the sponsor shows by affidavit or formal hearing
- (1) the necessity for early, immediate, or temporary relief,
- and
- (2) adverse effect to the public interest by reason of delay occasioned by compliance with the requirements of AS 18.07.041 and application procedures prescribed by regulations under this chapter.
- (c) The state agency shall review each affidavit requesting an emergency or temporary certificate of need under the criteria set out in (a) of this section.

- (d) A temporary certificate of need granted under (a) [AND (b)] of this section confers no vested rights on behalf of the applicant. The department [OFFICE] shall impose those special limitations and restrictions concerning duration and right of extension which the department [OFFICE] considers appropriate. [NO TEMPORARY CERTIFICATE MAY BE GRANTED FOR A PERIOD LONGER THAN NECESSARY FOR THE SPONSOR TO OBTAIN REVIEW OF THE ACTION CERTIFICATE BY THE TEMPORARY CERTIFICATE UNDER AS 18.07.051. APPLICATION FOR A CERTIFICATE OF NEED UNDER AS 18.07.041 MUST COMMENCE WITHIN 60 DAYS OF THE DATE OF ISSUANCE OF THE TEMPORARY CERTIFICATE.]

Given the questions that have surrounded the issue of modification, suspension or revocation of a certificate we would suggest that section 18.07.081(a) be amended as follows:

- (a) The department [OFFICE], a member of the public who is substantially and adversely affected by activities authorized by the certificate of need, or another applicant for a certificate of need for a similar service within the same health service area may initiate a hearing to obtain modification, suspension or revocation of an existing certificate of need by filing an accusation with the commissioner as prescribed under AS 44.62.360. No revocation, modification, or suspension of an outstanding certificate of need may be undertaken unless it is in accordance with AS 44.62.330 - 44.62.630.

Federal requirements necessitate revision to AS 18.07.101, as follows:

Sec. 18.07.101. REGULATIONS. (a) The commissioner shall adopt, in accordance with the Administrative Procedure Act (AS 44.62), regulations which establish procedures and criteria under which sponsors may make application for certificates of need required by this chapter and which govern the review of those applications by the department and health systems agencies [OFFICE], establish requirements for a uniform statewide system of reporting financial and other operating data, and otherwise carry out the purposes of this chapter.

- (b) The commissioner may not adopt regulations which
- (1) establish criteria for the review of applications for emergency certificates other than those stated in AS 18.07.071; and
 - (2) establish criteria for the review of applications submitted by a health maintenance organization or a health care facility other than those necessary to determine:

Nancy Dietrich

-7-

April 1, 1982

We would be happy to discuss this long and involved letter to you to further explain why such changes are being recommended and to provide any other assistance we can in achieving passage of Senate Bill 760.

Thank you again for your consideration. We look forward to hearing from you.

Sincerely,



Phoebe A. Lindsey
Director

cc: Helen D. Beirne
Frederick McGinnis
Dave Williams
Joe Cladouhos
Linda Scoccia

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF STATE HEALTH PLANNING & DEVELOPMENT

JAY S. HAMMOND, GOVERNOR

POUCH H 01A
JUNEAU, ALASKA 99811
PHONE: 465-3037

DOCUMENT NO. 124-82

April 1, 1982

Nancy Dietrich
Office of Senator Charles Parr
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Nancy:

Thank you for your request to provide additional language to Senate Bill 760, as our position paper indicated we would be happy to do. We are pleased that SB 760, in its current form, incorporates the capability to raise the certificate of need thresholds. The other amendments we would suggest would bring AS 18.07 into full compliance with federal requirements and remove the threat of financial sanction. These additional revisions have been developed with the Department of Law. The Department of Law advised that a simple reference to the amended public law would not be adequate but that the additional language which follows would be required to bring the Alaska certificate of need program into full compliance.

Section 2

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- (4) acquisition of major medical equipment; and
 - (5) acquisition of an existing health care facility.
- (b) This section applies to a health care facility controlled by a health maintenance organization or an ambulatory care facility controlled by a health maintenance organization only if:
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 - (2) the department does not grant the organization or facility an exemption under AS 18.07.032.

The issue of exemption needs further specification and we would suggest the addition of a new section, as follows:

Sec. 18.07.032. EXEMPTION FROM THE REQUIREMENT FOR A CERTIFICATE OF NEED. (a) A person may be exempt from the requirements of AS 18.07.031 only if the person applies to the department for the exemption at least 30 days before the person agrees to spend money for the proposed activity or contracts for the proposed activity.

- (b) The department shall grant an exemption if the application is made as provided in (a) of this section and the exemption is requested.
- (1) to acquire an existing health care facility if the services or bed capacity of the facility are not changed;
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 - (ii) the facility in which the service is provided is geographically located so that the service is reasonably accessible to the individuals enrolled with the organization, and
 - (iii) at least 75 percent of the patients who can reasonably be expected to receive the health service are individuals enrolled with the organization;

- (B) a health care facility if
 - (i) the health care facility primarily provides inpatient services,
 - (ii) the facility is controlled by a health maintenance organization meeting the enrollment requirements set out in (A) of this paragraph, and
 - (iii) the location and expected use of the facility meet the requirements set out in (A) of this paragraph;
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- (d) An exemption granted under (b)(3) of this section does not, with respect to a health care facility or medical equipment involved in the exemption, apply to:
 - (1) a sale or lease by the recipient of the exemption after the exemption is granted;
 - (2) the acquisition of a controlling interest in the facility or equipment after the exemption is granted;
 - (3) the use by any person other than the lessee of leased facilities described in (b)(3)(C) of this section after the exemption is granted.

To remain consistent with other "cosmetic" changes noted in our position paper, sections 18.07.041 and 18.07.061 and 18.07.081 could be amended so that the word department is used in place of OFFICE and the words of need follow the word certificate, as appropriate.

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- (1) the necessity for early, immediate, or temporary relief,
- and
- (2) adverse effect to the public interest by reason of delay occasioned by compliance with the requirements of AS 18.07.041 and application procedures prescribed by regulations under this chapter.
- (c) The state agency shall review each affidavit requesting an emergency or temporary certificate of need under the criteria set out in (a) of this section.

- (d) A temporary certificate of need granted under (a) [AND (b)] of this section confers no vested rights on behalf of the applicant. The department [OFFICE] shall impose those special limitations and restrictions concerning duration and right of extension which the department [OFFICE] considers appropriate. [NO TEMPORARY CERTIFICATE MAY BE GRANTED FOR A PERIOD LONGER THAN NECESSARY FOR THE SPONSOR TO OBTAIN REVIEW OF THE ACTION CERTIFICATE BY THE TEMPORARY CERTIFICATE UNDER AS 18.07.051. APPLICATION FOR A CERTIFICATE OF NEED UNDER AS 18.07.041 MUST COMMENCE WITHIN 60 DAYS OF THE DATE OF ISSUANCE OF THE TEMPORARY CERTIFICATE.]

Given the questions that have surrounded the issue of modification, suspension or revocation of a certificate we would suggest that section 18.07.081(a) be amended as follows:

- (a) The department [OFFICE], a member of the public who is substantially and adversely affected by activities authorized by the certificate of need, or another applicant for a certificate of need for a similar service within the same health service area may initiate a hearing to obtain modification, suspension or revocation of an existing certificate of need by filing an accusation with the commissioner as prescribed under AS 44.62.360. No revocation, modification, or suspension of an outstanding certificate of need may be undertaken unless it is in accordance with AS 44.62.330 - 44.62.630.

Federal requirements necessitate revision to AS 18.07.101, as follows:

Sec. 18.07.101. REGULATIONS. (a) The commissioner shall adopt, in accordance with the Administrative Procedure Act (AS 44.62), regulations which establish procedures and criteria under which sponsors may make application for certificates of need required by this chapter and which govern the review of those applications by the department and health systems agencies [OFFICE], establish requirements for a uniform statewide system of reporting financial and other operating data, and otherwise carry out the purposes of this chapter.

(b) The commissioner may not adopt regulations which

- (1) establish criteria for the review of applications for emergency certificates other than those stated in AS 18.07.071; and
- (2) establish criteria for the review of applications submitted by a health maintenance organization or a health care facility other than those necessary to determine:

- (A) the needs of existing or future members, and
- (B) the ability of the organization to provide, through services or facilities available to the organization, reasonable and inexpensive institutional health services consistent with the basic method of operation of the organization and the ability of the organization to provide the services on a long-term basis through physicians and other health professionals associated with the organization.
- (c) The commissioner shall adopt regulations which establish criteria for the review of an application submitted by an osteopathic or allopathic facility which include a determination of the need for and availability of facilities for osteopathic or allopathic physicians, their patients and the effect of the facility on training programs for doctors of osteopathy and medicine.

The definition section in 18.07.111 should be augmented as follows:

- (12) "major medical equipment"
 - (A) means medical equipment which is used to provide medical and other health services and which costs more than \$150,000, and
 - (B) does not include medical equipment acquired by or on behalf of a clinical laboratory which
 - (i) is not in or part of a physician's office or a hospital; and
 - (ii) meets the requirements of 42 USC 1395;
- (13) "health maintenance organization" means a health maintenance organization as defined in regulations adopted by the secretary of the United States Department of Health and Human Services under the Public Health Service Act (P.L. 93-641), as amended by P.L. 96-79;
- (14) "rehabilitation facility" means an inpatient facility which is operated primarily to assist in the rehabilitation of disabled persons through an integrated program of medical and other health services which are provided under competent professional supervision.

Sections 18.07.111 (10) and (11) could then be repealed.

Nancy Dietrich

-7-

April 1, 1982

We would be happy to discuss this long and involved letter to you to further explain why such changes are being recommended and to provide any other assistance we can in achieving passage of Senate Bill 760.

Thank you again for your consideration. We look forward to hearing from you.

Sincerely,



Phoebe A. Lindsey
Director

cc: Helen D. Beirne
Frederick McGinnis
Dave Williams
Joe Cladouhos
Linda Scoccia

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

March 24, 1982

DOCUMENT NO. 112-82

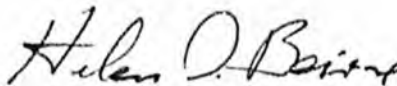
The Honorable Charles H. Parr
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Parr:

Enclosed is the Department's position paper on Senate Bill 760, An Act Amending the National Health Planning and Resources Development Act and providing for an effective date. While SB 760 in its current form does not bring AS 18.07 into full compliance with federal statutes and regulations, it would provide for the increased thresholds related to certificate of need review. We believe this is an important consideration and have suggested other amendments in our position paper.

We appreciate your introduction of this bill and would welcome a hearing on it.

Sincerely,



Helen D. Beirne
Commissioner

Enclosure

cc: Phoebe A. Lindsey

POSITION PAPER
ON
SENATE BILL NO. 760

For an Act entitled "An Act adding amendments to statutory references to The National Health Planning and Resources Development Act of 1974 (P.L. 93-641): and providing for an effective date"

Senate Bill 760 amends AS 18.07 to comply with amendments to the National Health Planning and Resources Development Act, as incorporated in P.L. 96-79, (effective October 4, 1979) and P.L. 97-35 (effective October 1, 1981). Such amendments are required of all states wishing to participate in and receive funding under the Public Health Service Act, the Community Mental Health Centers Act, the Comprehensive Alcohol Abuse Act and Alcoholism Prevention, Treatment and Rehabilitation Act and the Drug Abuse Office and Treatment Act of 1972. The Department of Health and Social Services supports passage of Senate Bill 760.

The purpose of the National Health Planning Law is to encourage consumer and provider involvement at both the local and the State level in planning for and implementing a health care system in Alaska that provides equitable access to quality care at reasonable costs. This process requires the development of local health plans which are used as an information source in the development of a State Health Plan. The State Health Plan is to serve as a guide to the Governor and the Legislature for health policy development and resource allocation.

The amendments to the National Health Planning Law as incorporated in P.L. 96-79 and addressed in Senate Bill 760 modify the planning process, strengthen the role of the Governor in approval and use of the State Health Plan and introduce organizational changes within the planning boards and advisory committees.

Other amendments to P.L. 93-641 by P.L. 96-79 fall into three categories: coverage of rehabilitation facilities, major medical equipment and coverage of health maintenance organizations. Each of these issues is addressed in detail below:

Rehabilitation Facilities

One requirement of the amended Public Law is that rehabilitation facilities be included as facilities subject to certificate of need review. Rehabilitation facility is defined to mean an inpatient facility which is operated primarily to assist in the rehabilitation of disabled persons through an integrated program of medical and other health services, which are provided under competent supervision. This definition should not result in additional health care facilities being subject to certificate of need review in Alaska, but will serve to clarify the type of rehabilitation facilities which are subject to certificate of need review. SB 760 does not authorize the Department to carry out this requirement of the amended Public Law. The Department believes it is important to include additional language to meet this requirement and will be pleased to work with the committee to develop the needed language.

Major Medical Equipment

The amended Public Law also establishes a requirement for certificate of need review of major medical equipment which will be used for inpatients, regardless of its location. Major medical equipment located outside a health care facility may be exempt from review if: 1) the sponsor notifies the state agency in writing of intent to purchase such equipment; and 2) the state agency determines that the equipment will not be used for inpatients.

The purpose of this provision is to close the gap which currently allows a physician to purchase major medical equipment for a health care facility and thereby avoid the requirement for a certificate of need. Although this provision is required to be in effect in each state, its impact will not be significant in Alaska, since Alaskan physicians generally rely upon hospitals to provide such equipment. SB 760 does not authorize the Department to carry out this requirement of the amended Public Law. The Department believes it is important to include additional language to meet this requirement and will be pleased to work with the committee to develop the needed language.

Health Maintenance Organizations

The amended Public Law requires an exemption for certain health maintenance organizations (HMOs) which have an enrollment of at least 50,000 from certificate of need review. The impact of this provision is not expected to be significant since there are no such HMOs in Alaska. SB 760 does not authorize the Department to carry out this requirement of the amended Public Law. The Department believes it is essential to include additional language to meet this requirement and will be pleased to work with the committee to develop the needed language.

The amendments to the National Health Planning Law incorporated in P.L. 97-35 (the Omnibus Reconciliation Act of 1981), allow increased options with regard to state health planning and state certificate of need programs. The federally mandated threshold levels for state certificate of need programs were raised, and States permitted to make adjustments to those thresholds to account for inflation. The new Federally mandated threshold levels are as follows:

\$600,000 - capital expenditures related to construction:

\$400,000 - for capital expenditures for major medical equipment; and

\$250,000 - for annual operating costs for new institutional health services.

Impact of non-passage of the Bill

There are significant potential fiscal losses to the State if legislation is not passed enabling the State Health Planning and Development Agency (SHPDA) to carry out its full responsibilities under the Public Law 96-79 ("The Health Planning and Resources Development Amendments of 1979"). If SHPDA is not fully empowered by State statute by January 1983, to conduct the "State Program" mandated by P.L. 93-641, as amended by P.L. 96-79, the SHPDA designation agreement with the Federal government is subject to termination, or the SHPDA designation agreement may be made conditional for one year and the designation then withdrawn. Should the agreement be terminated, the State would no longer be eligible for certain Federal human service program funds.

Recent indications of reduced Federal funding through block grant programs has caused uncertainty as to the impact of a reversion of the State Health Planning and Development Agency (SHPDA) to "Conditional Designation" for the period of January 1, 1983 through December 31, 1983 or termination of the SHPDA/Federal health planning agreement. During 1981 the total Federal funding which could be impacted by sanctions under P.L. 93-641, as amended by P.L. 96-79 was approximately \$7,000,000 annually received under the Public Health Service Act, the Community Mental Health Centers Act, the Comprehensive Alcohol Abuse Act, and Alcoholism Prevention, Treatment and Rehabilitation Act, and the Drug Abuse Office and Treatment Act of 1972. Approximate 1983 Federal funding under those Acts is given as follows:

Total Project Grants \$4,161,000
Formula Grants \$ 900,000

The methods by which the Federal government would reduce program funds under the aforementioned Acts is unclear. Some of the funds are made available to municipalities and other entities; some will be through block grants to the State. Some of the affected programs are within the purview of the Alaska Department of Health and Social Services; some relate to the Department of Education and/or the University system.

The National Health Planning and Resources Development Act is scheduled for renewal by October 4, 1982. It is unclear at this point whether Congress will be seeking to amend or extend this legislation, replace this act with an Administration pro-competitive bill, or allow the Federal authority to expire. Alaska's statutes incorporate the Federal act by reference and will need to be amended at some future date to be consistent with Congressional action.

The Department recommends one technical amendment to SB 760. The reference to the "office of planning and research" in line 21 of the Bill should be changed to the agency's actual title: "Division of State Health Planning and Development.

Recommended by: Phoebe A. Lindsey
Phoebe A. Lindsey, Director
Division of State Health
Planning & Development

Date: March 19, 1982

Approved by: Helen D. Beirne
Helen D. Beirne
Commissioner

Date: 3 - 23 - 82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

I. REQUEST

Bill/Resolution No. Senate Bill 760
 Title "An Act adding amendments to statutory references to the National *
Requested by Department of Health and Social Services
*Health Planning and Resources Development Act of 1974..."

II. FISCAL DETAIL

Agency Affected Health and Social Services
 Program Category Affected Health
 BRU, Program, Or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item
 amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This bill does not change the financing of the Division of State Health
 Planning and Development.

IV. DATE 2-16-82

PREPARED BY Dave W. Williams *xl*
 AGENCY DHSS - Division of State Health Planning *J*
 PHONE 465-3015

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

JCC

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

alaska
state
hospital
association

Bill 2
membership
packets

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

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Hospital
Fairbanks

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Mark Hawkins
Sitka Community Hospital
Sitka

Immediate Past Chairman
Sister Barbara Haase
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Ketchikan

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Anchorage

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Cordova Community
Hospital
Cordova

Delegate to the American
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St. Ann's Nursing Home
Juneau

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Wrangell General Hospital
Wrangell

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Michael Herring
South Peninsula Hospital
Homer

Alternate Delegate to the
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Daniel Van Wieringen
Kodiak Island Hospital
Kodiak

Trustee Delegate to the
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Moe Kadish
Trustee, Providence
Hospital
Anchorage

Alternate Trustee Delegate
to American Hospital
Association
Robert Jensen
Central Peninsula Hospital
Soldotna

President
Dennis L. DeWitt
Juneau

February 24, 1982

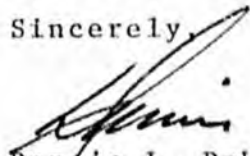
The Honorable Charles H. Parr
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Senator Parr:

The HESS Committee will soon be considering legis-
lation to alter the state's Certificate of Need law. We
believe that its value is nonexistent in Alaska and there-
fore ought to be repealed outright. However, none of the
legislation currently proposes that action.

I have enclosed correspondence indicating the init-
iation of a Certificate of Need application for an incin-
erator at Providence Hospital in Anchorage. Clearly, it
demonstrates the need for at least a substantial change
in the types of activities considered by the Certificate
of Need regulators. We believe that raising the dollar
threshold from the current \$150,000 to \$1.5 - \$2 million
would focus the regulation activities in a more reasonable
area of activity.

Sincerely,


Dennis L. DeWitt
President

DLD:bf
Enclosure

PROVIDENCE HOSPITAL

3200 PROVIDENCE DRIVE - POUCH 6604
ANCHORAGE, ALASKA 99502
PHONE: (907) 276-4511



SERVING IN THE WEST SINCE 1856

January 26, 1982

Mr. Randolph Berry
CON Coordinator
Department of Health & Social Services
Pouch H-01A
Juneau, AK 99811

Dear Mr. Berry:

Providence Hospital hereby notifies you of our intent to apply for a Certificate of Need to replace and upgrade the current incinerator. The machine we are planning to purchase is A39 Incinerator manufactured by Compro Division of Sunbeam Equipment Corporation. The estimated cost of the machine is \$178,000, including shipping and installation.

We recognize that the thresholds for CON may change significantly by action of the current State Legislature. However, we must place the order for the incinerator by April and be ready to receive the machine by mid-July in order to have it installed, operational and tested by winter. Therefore, we cannot afford to wait if we do have to proceed with the CON preparation.

There are several significant reasons why we must replace and upgrade the incinerator.

- The current incinerator was installed in 1963, shortly after the Services Building was complete. It has been rebuilt two times and is absolutely beyond further repair.
- The use of the current incinerator is restricted; if it were fired at full capacity, it would not meet EPA pollution codes.
- The current incinerator does not have sufficient capacity (e.g. heating capability) to burn all the specialty waste produced by a hospital, in particular, human tissue, syringes, surgical specimens, human limbs and any glass specimen and sample containers. According to State of Alaska regulation, hospitals are required to burn placentas. The current incinerator is not capable of burning placentas. The new incinerator would have that capacity.

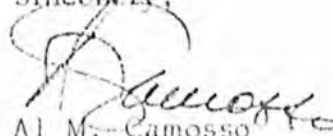
Mr. Randolph Berry
Page Two
January 22, 1982

In addition to the need to replace and upgrade the current incinerator, the new machine will be very energy efficient. We will be able to recover up to 60 pounds of steam heat which will supplement up to 25% of the steam load for the South Tower in the winter and will be able to provide the entire steam heat needs of the South Tower during the summer months.

The proposed incinerator is cost effective. It is projected that the incinerator will pay for itself within six years by savings on the steam heat and current disposal costs for waste. The incinerator is not patient related. There will be no additional operational costs due to the purchase of the machine. We will purchase the machine with cash, and there will be no impact on daily patient charges.

We would like to ask you for a determination of a need for a Certificate of Need and guidance on the process and timing.

Sincerely,


Al M. Camosso
Administrator

cc: Susan Callan
Mary Walters

alaska
state
hospital
association

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790

REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

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Robert Jensen
Central Peninsula Hospital
Soldotna

President
Dennis L. DeWitt
Juneau

March 18, 1982

The Honorable Charles H. Parr
Alaska State Senate
Pouch V, State Capitol Building
Juneau, AK 99811

Dear Senator Parr:

The Alaska State Hospital Association wishes to indicate its support for Senate Bill 760.

It is our understanding that the prime reason for its introduction was to increase the threshold for certificate of need reviews. In its present form, however, it makes other alterations in the program as well, such as review of acquisition of a health facility and exemptions from review for qualified health maintenance organizations. By the time the federal government finishes its regulatory process, the impact of SB 760 is anybody's guess.

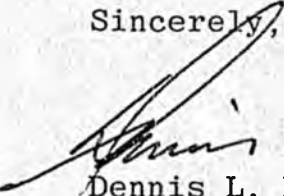
We believe however, that there is a much simpler and direct method of obtaining the increased thresholds. I have attached 3 options for your consideration. Option 1 adopts a simple across the board threshold of \$1,000,000. This would likely not be opposed by the HSA's and might even secure some support. Option 2 uses the federal numbers increased by 25% to reflect Alaska's cost differential. Option 3 simply uses the federal numbers. Options 2 and 3 are on the same page with option 3 numbers in parenthesis.

As to the need for conformity to federal law, we believe that this is no longer an issue. At least two of our western neighbors, California and Oregon, have adopted \$1,000,000 thresholds and fail the conformity test in other areas. They are not alone as a sizable number of states will not be in conformity. With the advent of block grants and the reduction in applicable federal grant money against which any sanctions could be placed, the ominous nature of any potential sanctions fade.

Senator Parr
Page two

I would be pleased to discuss this issue with you at
your convenience.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis", written over a horizontal line.

Dennis L. DeWitt
President

DLD:bf
Encls.

Proposed Committee Substitute for SB 760

Option 1

Section 1 AS 18.07.031 is repealed and reenacted to read:

Section 18.07.031 Certificate of Need required. No person may undertake the following unless authorized under the terms of a Certificate of Need issued by the office.

1. Any increase within a two year period in the licensed bed capacity of a health facility amounting to 10 beds or 10 percent, whichever is less.
2. A capital expenditure in excess of \$1,000,000 adjusted January 1 of each year by the Cost of Living Index published by the Bureau of Labor Statistics of the U.S. Department of Labor for the City of Anchorage for:
 - a. construction of a health facility;
 - b. addition of a category of health facility services provided by a health facility.

Proposed Committee Substitute for SB 760

Options 2 & 3

Section 1 AS 18.07.031 is repealed and reenacted to read:

Section 18.07.031 Certificate of Need required. No person may undertake the following unless authorized under the terms of a Certificate of Need issued by the office.

1. Capital expenditure related to the construction of a health facility at a cost in excess of \$750,000; (\$600,000);
2. Capital expenditure for major medical equipment to be used in a health facility at a cost in excess of \$500,000; (\$400,000); or
3. Creation of new service in a health facility which would have an annual operating cost in excess of \$325,000; (\$250,000).

The dollar thresholds set forth in Section 1 shall be adjusted January 1 of each year by the Cost of Living Index published by the Bureau of Labor for the City of Anchorage.

PROVIDENCE
HOSPITAL



3201 PROVIDENCE DRIVE - POUCH 6604
ANCHORAGE, ALASKA 99502
PHONE: (907) 276-4511

SERVING IN THE WEST SINCE 1856

January 26, 1982

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CON Coordinator
Department of Health & Social Services
Pouch H-01A
Juneau, AK 99811

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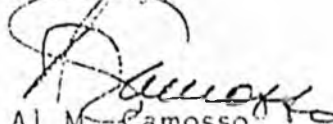
Mr. Randolph Berry
Page Two
January 22, 1982

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Sincerely,



Al M. Camosso
Administrator

cc: Susan Callan
Mary Walters

CS for SB 760

Section 1

Brings this section of the statute in compliance with PL96-79 and the Omnibus Reconciliation Act.

Section 2

More clearly delineates the functions of the state health planning agency. (as amended). Subsections (3) and (4) are functions currently in place but not specifically outlined in statute.

Section 3

Clarification of requirement for C.O.N. Subsections (4) and (5) are new, making reference to acquisition of facilities and major medical equipment purchases which have been referenced in regulations but not in statute. References to HMO's are for the purposes of bringing state law in compliance with federal law.

Section 4

A new section dealing with exemptions from C.O.N. grants more flexibility to the department in delineating conditions that do not require the C.O.N. process. Once again, references to HMO's are required for federal compliance.

Section 5

The only change is in the wording. "Office" was made "department" for continuity.

Section 6

Language clean up only for continuity in the statutes.

Section 7

Adds ambulatory care facility and HMO to current statute. Defines emergency situations for which an emergency C.O.N. can be granted - the elimination of safety hazards and compliance with licensure and accreditation.

Section 8

Clarification of 18.07.081. Protects certificate holders from arbitrary legal action to suspend or revoke a C.O.N. by a potential competitor.

Section 9

Language clean up for continuity.

Section 10

Language clean up in subsection (a). (b) is new. Defines the extent to which the Commissioner Cannot adopt regulations: for emergency certificates and for HMO's. (c) compliance with federal requirements for osteopathic facilities.

Section 11

Language clean-up amending PL 93-641

Section 12

Adds rehabilitation facility to the definition of health care facility for compliance purposes.

(A) is new, shows exemption of Pioneers Homes from CON.

(B) same reference as current Statute in new subsection.

Section 13

Language clean up amending PL 93-641

Section 14

All new definitions for terms used in this section and to conform with federal requirements.

(42 USC 1395 is the Social Security Act)

Section 15

Language clean up, amending PL 93-641

Section 16

Amending PL 93-641 in reference to the Advisory Board on Alcoholism.

Section 17

Language clean up amending PL 93-641 in reference to the grant in aid program in Alcoholism Statute.

Section 18

Repeals definitions of "office" and "secretary" because they are not longer used in the statute

Section 19

Effective date.

C.O.N. Thresholds

Old threshold was \$150,000 for any construction, services and equipment purchase.

New Thresholds

\$600,000 - Capital expenditures for construction.

\$400,000 - Major medical equipment.

\$250,000 - New services (annual operating costs).

A M E N D M E N T #1

TO: CSSB 760 (HESS)

By Parr

Page 2, line 8, after "facility" insert:

"at a cost of \$600,000 or more, or at a cost exceeding a minimum dollar amount established by the United States Secretary of Commerce under 42 U.S.C. sec. 300n(6);"

Page 2, line 9, after "facility" insert:

"at a cost of \$600,000 or more"

Page 2, line 10:

Delete "addition or"

Page 2, following line 11, insert:

(4) addition of a category of health services by a health care facility that increases the annual operating cost of the facility by \$250,000 or more;

Page 2, line 12:

Delete "(4)" and insert "(5)"

Page 2, line 13:

Delete "(5)" and insert "(6)"

alaska
state
hospital
association

*Stacey
please see me
C*

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

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Hospital
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Trustees, Providence
Hospital
Anchorage

Alternate Trustee Delegate
to American Hospital
Association
Robert Jensen
Central Peninsula Hospital
Soldotna

President
Dennis L. DeWitt
Juneau

April 9, 1982

The Honorable Charles M. Parr
Alaska State Senate
Pouch V, State Capitol Building
Juneau, AK 99811

Dear Senator Parr:

I have had an opportunity to quickly review the amendments proposed to SB 760 by Ms. Phoebe Lindsay on behalf of the Department of Health & Social Services, dated April 1, 1982 and have the following specific comments:

1. The proposed amendment (page 4) to AS 18.07.71(1) authorizes the issuance of an emergency certificate of need for a project "needed and consistent with the state health plan". We believe this to be overly broad as all projects which receive a certificate of need could qualify under that language to receive an emergency certificate of need.

2. The proposed amendment (page 5) to AS 18.07.071(d) references "a temporary certificate of need granted under (a) of this section..." On review we note that (a) of section .071 grants emergency certificates of need, not temporary certificates of need, which are granted under subsection (b).

*OK
changed*

3. The proposed addition (page 6) of subsection (c) to AS 18.07.111 is somewhat bewildering. That section excises one section of federal regulation CFR 123.412(a) (21) Criteria for State Agency Review, which includes some 20 other subsections, for specific reference in our state statute. We must question where federal conformity requires inclusion of 42 CFR 123.442(a)(21) and not 42 CFR 123.412(a)(5) which discusses the special needs of low income, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly.

*Not-
referencing
to
42 CFR*

Senator Charles M. Parr
Page two

4. The proposed amendment (page 6) to AS 18.07.111 relating to major medical equipment uses the amount of \$150,000 rather than \$400,000 as a threshold of review. This is not consistent with testimony or your expressed intent.

*OK
changed.*

As general comments, we would point out that the legislature has no guarantee that the adoption of SB 760 will, in fact, raise the thresholds for certificate of need reviews. That increase becomes permissive in that the federal language permits the state to use the current figure adjusted for inflation.

Finally we would point out that without the inclusion of Pioneer's Home nursing beds, conformity will not be achieved. I have included pertinent federal law for your review.

Sincerely,



Dennis L. DeWitt
President

DLD:bf
Encls.

AND WELFARE

health care facility, acquire
e need for that construction,
quipment, or addition of ser-
need for and the availability
or osteopathic and allopathic
gency shall consider the ap-
s and proposed institutional
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recommendations from
in State
ions for certificates of need
er such a program, a State
ations made by health sys-
300l-2(f) of this title.
ed Oct. 4, 1979, Pub.L. 96-

section 117(c) of Pub.L. 96-70
that: "The Comptroller General
duct an evaluation of the exemp-
thority provided by section
of the Public Health Service Act
b) of this section]. In conduct-
valuation, the Comptroller Gen-
determine—
he health maintenance organiza-
ombinations of health mainte-
organizations, and health care fa-
which have applied to receive an
on under that section,
he services, facilities, and
nt with respect to which appli-
have been submitted under that

he impact of the exemption on
contractual arrangements be-
health maintenance organizations
th care facilities and on plans
organizations respecting such
ments, and
he impact of the exemption on
are delivery systems, including
ct on the cost, availability, ac-
y, and quality of health care.
troller General shall report the
the evaluation to the Commit-
tor and Human Resources of
and the Committee on Inter-
Foreign Commerce of the
Representatives not later than
1, 1982."

ment of Certificates of Need
Promulgation of Regulations
7-1) of Pub.L. 96-70 provided
in one hundred and eighty
date of the enactment of this
1, 1979), the Secretary of
ducation, and Welfare shall
such regulations as may be
to enable the States to estab-
ents of need programs which
requirements of section 1527 of
Health Service Act (this sec-

History. For legislative
purpose of Pub.L. 96-70, see
de Cong. and Adm.News, p.

ION8

f this subchapter:
Columbia,
xecutive officer of a State

as an individual—
re (including a physician,
cian assistant, or ancillary

PUBLIC HEALTH AND WELFARE

42 § 300n

personnel employed under the supervision of a physician) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities or institutions (including hospitals, long-term care facilities, rehabilitation facilities, alcohol and drug abuse treatment facilities, outpatient facilities, and health maintenance organizations) in which such care is provided and, when required by State law, the individual has received professional training in the provision of such care or in such administration and is licensed or certified for such provision or administration;

(B) who holds a fiduciary position with, or has a fiduciary interest in, any entity described in clause (ii) or (iv) of subparagraph (C) other than an entity described in such clause which is also an entity described in section 501(c)(3) of Title 26 and which does not have as its primary purpose the delivery of health care, the conduct of research, the conduct of instruction for health professionals, or the production of drugs or articles described in clause (iii) of subparagraph (C);

(C) who receives (either directly or through the individual's spouse) more than one-fifth of his gross annual income from any one or combination of—

- (i) fees or other compensation for research into or instruction in the provision of health care,
- (ii) entities engaged in the provision of health care or in research or instruction in the provision of health care,
- (iii) producing or supplying drugs or other articles for individuals or entities for use in the provision of or in research into or instruction in the provision of health care, or
- (iv) entities engaged in producing drugs or such other articles;

(D) who is the member of the immediate family of an individual described in subparagraph (A), (B), or (C); or

(E) who is engaged in issuing any policy or contract of individual or group health insurance or hospital or medical service benefits.

An individual shall not be considered a provider of health care solely because the individual is the member of the governing board of an entity described in clause (ii) or (iv) of subparagraph (C).

(4) the term "health resources" includes health services, health professions personnel, and health facilities, except that such term does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

(5) The term "institutional health services" means health services which (A) are provided through private and public hospitals, rehabilitation facilities, nursing homes, and other health care facilities, as defined by the Secretary by regulation, and (B) entail annual operating costs of at least the expenditure minimum. For purposes of this paragraph, the term "expenditure minimum" means \$75,000 for the twelve-month period beginning with the month in which this paragraph is enacted and for each twelve-month period thereafter, \$75,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index maintained or developed by the Department of Commerce and designated by the Secretary by regulation for purposes of making such adjustment.

(6) For purposes of sections 300m-2 and 300m-6 of this title, the term "capital expenditure" means an expenditure—

(A) made by or on behalf of a health care facility (as such a facility is defined in regulations prescribed under paragraph (5)); and

(B) (i) which (i) under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance, or (ii) is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and

(ii) which (I) exceeds the expenditure minimum, (II) substantially changes the bed capacity of the facility with respect to which the expenditure is made, or (III) substantially changes the services of such facility.

For purposes of subparagraph (B)(ii)(I), the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure described in subparagraph (B)(i) is made shall be included in determining if such expenditure exceeds the expenditure minimum. Donations of equipment or facilities to a health care facility which if acquired directly by such facility would be subject to review under section 300m-6 of this title shall be considered capital expenditures for purposes of sections 300m-2 and 300m-6 of this title, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure for purposes of such sections if a transfer of the equipment or facilities at fair market value would be subject to review under section 300m-6 of this title. For purposes of this paragraph, the term "expenditure minimum" means \$150,000 for the twelve-month period beginning with October 1979 and for each twelve-month period thereafter, \$150,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index maintained or developed by the Department of Commerce and designated by the Secretary by regulation for purposes of making such adjustment.

(7) For purposes of sections 300m-2 and 300m-6 of this title, the term "major medical equipment" means medical equipment which is used for the provision of medical and other health services and which costs in excess of \$150,000, except that such term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of such Act. In determining whether medical equipment has a value in excess of \$150,000, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of such equipment shall be included.

(8) The term "health maintenance organization" means a public or private organization, organized under the laws of any State, which—

(A) is a qualified health maintenance organization under section 306e-9(d) of this title; or

(B)(i) provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services, and out of area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in clause (i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (I) directly through physicians who are either employees or partners of such organization, or (II) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(9) For purposes of paragraph (5) of this section and sections 300m-2 (a)(4)(B) and 300m-6 of this title, the term "rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision. For purposes of the remaining provisions of this title, the term "rehabilitation facility" means an inpatient facility

described in the which is operated

(10) The term ing as such term

(11) Any re health.

(12) The term legally authorized July 1, 1944, c. 641, § 3, 88 Stat. 14(c), 90 Stat. 90 Stat. 2324, (2), 117(b)(3)

References in the Social Security Act such Act, refer to sections classified to section title and to section respectively.

1978 Amendment 117(b)(3), substituted par. (1), provided, for "for" Par. (1). Pub. struck out "and Puerto Rico" following "umbria".

Par. (3). Pub.L. subpar. (A). Insert "personnel employed by a physician" following "and substituted facilities" for "sub facilities", redesign (B)(i) as subpar. (as so redesignated) to read: "The individual who has with or interest in in cl. (ii) or (iv) is also an entity 501(c)(3) of Title 2 as its primary public health care, the instruction of health production of drug in cl. (iii) of sub former subpar. (i) and in subpar. (c) redesignated which (i) to (iv), respect in provision proceed for "one tenth", re par. (ii)(iii) and (i (E), respectively, a subpar. (E), profits not be considered care service solely of the governing lcribed in cl. (ii) c

Par. (5). Pub.L. substituted "provisional health services which are state and public health facilities, nursing health care facilities operating costs of care minimum and of this paragraph "person" for "personnel health services" fees provided through and maintenance including the entities services are provided

Par. (6) to (2 117(b)(3), added par

Par. (9) to (1 1978 Amendment 91-484 defined "re to include an option

HEALTH PLANNING

State Planning Agencies

123.410 PROCEDURES FOR STATE AGENCY REVIEW, contd.

provided for the corresponding procedure found at 122.308(a) (4) or (5) of this title. The procedures of paragraph (a)(8) of this section shall be considered satisfied if the State Agency delegates the hearing responsibility to the appropriate health systems agency and the health systems agency follows the procedures at paragraph (a)(8) of this section.

Source: Federal Register, Jan. 21, 1977; Apr. 8, 1977; Apr. 2, 1979; Oct. 21, 1980.

123.411 Exceptions to use of procedures.

(a) The Secretary may approve an exception to any of the required review procedures under 123.410 either in response to a written request from a State Agency or as a general exception of which any State Agency may avail itself. In approving a general exception, the Secretary will establish substitute procedures where appropriate.

(b) Before availing itself of a general exception approved by the Secretary, the State Agency shall follow the notice and comment procedures of 123.409(c). Before submitting a written request for an exception under this section, the State Agency shall follow the notice and comment procedures of 123.409(c) and shall submit to the Secretary with its request copies of all comments which it receives. Before approving the request, the Secretary will (1) review copies of the comments submitted by the State Agency and (2) determine that the procedures which will be used are consistent with the purposes of the Act and will not adversely and substantially affect the rights of affected persons.

(c) The State Agency shall, in accordance with the requirements of 123.409(d), distribute a notice of the approved exceptions and of any substitute procedures established under this section.

Source: Federal Register, Jan. 21, 1977; Apr. 2, 1979; Oct. 21, 1980.

123.412 Criteria for State Agency review.

(a) The State Agency shall adopt, and use as applicable, specific criteria for conducting the reviews covered by this subpart. The criteria must be based only on the following general considerations, except that the State Agency may include any additional criteria which it prescribes by regulation in accordance with an authorization under State law. In the case of an HMO or an ambulatory care facility or health care facility controlled, directly, by an HMO or combination of HMOs, the criteria must be based only on the considerations set forth in paragraph (a)(13) of this section.

(a)(1) The relationship of the health services being reviewed to the applicable health systems plan, annual implementation plan, and State health plan.

(a)(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing the services.

(a)(3) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated, or eliminated.

(a)(4) The immediate and long-term financial feasibility of the proposal, as well as the probable effect of the proposal on the costs of and charges for providing health services by the person proposing the service.

(a)(5)

(i) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area,

17 12 CRITERIA FOR STATE AGENCY REVIEW, contd.

and in particular low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly, are likely to have access to those services.

(ii) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly, to obtain needed health care.

(a)(6) The contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women, and handicapped persons), particularly those needs identified in the applicable health systems plan, annual implementation plan, and State health plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the State Agency shall consider:

(i) The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

(ii) The performance of the applicant in meeting its obligation, if any, under any applicable Federal regulations requiring provision of uncompensated care, community service or access by minorities and handicapped persons to programs receiving Federal financial assistance (including the existence of any civil rights access complaints against the applicant);

(iii) The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant; and

(iv) The extent to which the applicant offers a range of means by which a person will have access to its services (e.g., outpatient services, admission by house staff, admission by personal physician).

Note—Where appropriate, the State Agency may also consider other access issues, such as: (1) the extent to which the applicant grants medical staff privileges to physicians who serve the medically underserved; and (2) the extent to which the applicant takes action necessary to remove barriers that limit access to the health services of the applicant. These barriers may include unavailability of public transportation; absence of translation services where a substantial portion of the population of the health service area does not speak English as its primary language; building designs that substantially hinder use of the facility; and financial barriers (e.g., preadmission deposits).

(a)(7) The relationship of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided.

(a)(8) The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan or State health plan.

(a)(9) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

123.412 CRITERIA FOR STATE AGENCY REVIEW, contd.

(a)(10) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

(a)(11) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.

(a)(12) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. These entities may include medical and other health professions schools, multi-disciplinary clinics and specialty centers.

(a)(13) The special needs and circumstances of HMOs. These needs and circumstances shall be limited to:

(i) The needs of enrolled members and reasonably anticipated new members of the HMO for the health services proposed to be provided by the organization; and

(ii) The availability of the new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the agency shall consider only whether the services from these providers:

(A) Would be available under a contract of at least five years' duration;

(B) Would be available and conveniently accessible through physicians and other health professionals associated with the HMO. (For example—whether physicians associated with the HMO have or will have full staff privileges at a non-HMO hospital);

(C) Would cost no more than if the services were provided by the HMO; and

(D) Would be available in a manner which is administratively feasible to the HMO.

(a)(14) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

(a)(15) In the case of a construction project—

(i) The costs and methods of the proposed construction, including the costs and methods of energy provision, and

(ii) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons.

(a)(16) The special circumstances of health care facilities with respect to the need for conserving energy.

(a)(17) In accordance with section 1502(b) of the Act, the factors which affect the effect of competition on the supply of the health services being reviewed.

(a)(18) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with section 1502(b) of the Act, and serve to promote quality assurance and cost effectiveness.

123.412 CRITERIA FOR STATE AGENCY REVIEW, contd.

(a)(19) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

(a)(20) In the case of existing services or facilities, the quality of care provided by those facilities in the past.

(a)(21) When an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The State Agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

Explanatory note—This provision seeks to ensure that the need for and availability of services and facilities for osteopathic physicians and patients will be considered.

(b) State Agencies shall apply all applicable criteria based on the considerations listed at 123.412. Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

Source: Federal Register, Oct. 21, 1980.

123.413 Required findings on access.

(a) Under 123.412(a) (5) and (6), the State Agency is required to develop criteria based on considerations relating to the need of the population to be served for the proposed project and the extent to which the residents of the area will have access to the project. For each project it approves, the State Agency shall make a written finding (which shall take into account the current accessibility of the facility as a whole) on the extent to which the project will meet the State Agency's criteria developed based on the considerations in 123.412(a) (5) and (6), except in the following cases:

(a)(1) Where the project is one described in 123.407(a) (projects to eliminate or prevent certain imminent safety hazards or to comply with certain licensure or accreditation standards); or

(a)(2) Where the project is a proposed capital expenditure not directly related to the provision of health services or to beds or major medical equipment; or

(a)(3) Where the project is proposed by or on behalf of an HMO or a health care facility which is controlled, directly or indirectly, by an HMO.

Explanatory note—When a project is approved, then in addition to the written findings required by 123.410(a)(6), to the extent that a project does not fall within one of these exceptions, a written finding under 123.413 regarding the criteria on need and access developed under 123.412(a) (5) and (6) is required. Examples of when the written finding is required as to whether a project satisfied the State Agency's criteria for need and access are as follows: (1) The applicant proposes to make a capital expenditure of \$400,000 required solely to comply with State licensure standards. The written finding is not required. (2) The applicant proposes to provide a new coronary care service with annual operating costs of more than the expenditure minimum. The written finding is required if the project is approved. (3) The applicant proposes to make a capital expenditure of \$200,000 to repave its parking lot, or to acquire computerized data processing equipment, or to repair or upgrade its heating or air conditioning equipment. The written finding is not required.

Fairbanks Memorial Hospital

1650 Cowles St.

FAIRBANKS, ALASKA 99701

OPERATED BY
LUTHERAN HOSPITALS AND HOMES SOCIETY
FARGO, NORTH DAKOTA 58102

April 13, 1982

Senator Charles H. Parr
Alaska State Legislature
Pouch V - Mail Stop 3100
Juneau, Alaska 99811

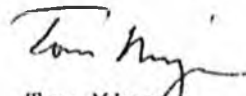
Dear Senator Parr:

There is a bill currently pending in the Senate (Senate Bill ⁷⁶⁰670) which addresses increasing of the certificate of need limits up to the federal standards. We are urging that you not only consider increasing them to the federal standards but also adjusting them on a yearly basis to the cost of living index published by the City of Anchorage.

Enclosed you will find the appropriate language which we are hoping that you adopt.

Thank you for your attention to this matter.

Sincerely,



Tom Mingen
Administrator

TM/mw

Enclosure

Certificate of Need Legislation

Section 1 AS 18.07.031 is repealed and reenacted to read:

Section 18.07.031 Certificate of Need required. No person may undertake the following unless authorized under the terms of a certificate of need issued by the office.

1. Capital expenditure related to the construction of a health facility at a cost in excess of \$750,000; or
2. Capital expenditure for major medical equipment to be used in a health facility at a cost in excess of \$500,000; or
3. Creation of new service in a health facility which would have an annual operating cost in excess of \$325,000.

The dollar thresholds set forth in Section 1 shall be adjusted January 1 of each year by the cost of living index published by the Bureau of Labor for the City of Anchorage.