

HB

399

HOUSE COMMITTEE REPORT file

(11)

Date Referred: March 19, 1990

FURTHER REFERRALS:

Date of Committee Action: 4/19/90

The FINANCE Committee considered:

HB 399

HOUSE BILL NO. 399

HEALTH PLANNING AND DEVELOPMENT

"An Act relating to state coordination of health planning and development; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with CS HB 399 (FIN) [] the same title
- [] have attached amendment(s) [] a new title
- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS: _____ (Date/Dept)

- [] fiscal impact _____
- [] zero fiscal note _____
- [] zero with analysis _____

- [] fiscal note(s) _____
- [] zero fiscal note(s) _____
- [] zero fn/analysis DHSS 1/8/90

SIGNING DO PASS:

Laura Hoffman Hoffman
Ronald E. Larson Larson
Steve Swackhammer Swackhammer
Tom Brown Brown
Robert Koppen Koppen
Ulmer Ulmer
Kay Waller Waller

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Ronald E. Larson</u> Phillips	<input checked="" type="checkbox"/>		
<u>Steve Swackhammer</u> Rieger		<input checked="" type="checkbox"/>	

Ronald E. Larson Larson
 Co-Chairman's Signature
Laura Hoffman Hoffman

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Certificate of Need
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Health & Social Services
BRU: Administrative Services
Components: Planning & Development

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	20.0	20.0	21.0	21.0	22.0	22.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-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-

ANALYSIS : (Attach a separate page if necessary)

See Attached

Prepared by: Dave W. Williams Phone: 465-3015
Division: Administrative Services Date: 11/8/89

Approved by Commissioner: Therese Chas. Atkins Date: 11/9/89
Agency: Health & Social Services

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Adopted

Analysis:

The purpose of the Certificate of Need law is to avoid unnecessary increases in the cost of health care that may be associated with:

- Health facility construction at a cost of \$1,000,000 or more;
- Changes in the health facility bed capacity; and
- Addition or elimination of institutional health service.

The bill provides for establishment of fees for applications submitted for review. The fees will be set out in regulations and reflect the amount of effort required to complete the review. Proposed regulations will include fees for submission of an application as follows:

Fixed portion		\$ 5,000
plus: Variable portion based on proposed capital expenditure amount:		
first \$ 1,000,000	1/2%	(.0050)
next 9,000,000	1/10%	(.0010)
over 10,000,000	1/50%	(.0002)

Thus a \$20,000,000 project would involve the following fees:

flat fee	\$ 5,000
first \$ 1,000,000	5,000
next 9,000,000	9,000
over 10,000,000	2,000
total fee	<u>\$ 21,000</u>

The \$20,000 in annual revenues shown in the fiscal note are based upon a yearly submission of applications totaling \$20 million. Although \$20 million in applications is a reasonable expectation for an average year, the actual revenues and staff time required will depend upon the amount of applications submitted. The department does not anticipate a requirement for additional staff for the certificate of need program administration unless the dollar value of submitted applications approaches an average of \$60 million per year.

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 399 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state coordination of health
7 planning and development; abolishing the Statewide
8 Health Coordinating Council; and providing for an
9 effective date."

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

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

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

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

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

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

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

29 (1) make a capital expenditure of \$1,000,000 or more for

1 construction of a health care facility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (2) comply with state licensure standards; or

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

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

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

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

1 shall take one or more of the following actions:

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

6 (2) deny a certificate of need;

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

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

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

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

1 suspension or revocation of an existing certificate of need by filing
2 an accusation with the department [COMMISSIONER] as prescribed under
3 AS 44.62.360. A revocation, modification, or suspension of an out-
4 standing certificate may not be undertaken unless it is in accordance
5 with AS 44.62.330 - 44.62.630.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (f) Notwithstanding AS 44.62.330 - 44.62.630, an order under (e)
22 of this section takes effect immediately upon service by the depart-
23 ment and remains in effect pending the decision after any hearing that
24 may have been requested unless the person served can demonstrate to
25 the department's satisfaction that the questioned activity is not
26 subject to the application and review requirements of AS 18.07.031 -
27 18.07.111, or that the person would likely prevail on the merits and
28 that allowing the activity to continue is in the public interest.

29 (g) Injunctive relief against a violation of AS 18.07.031 -

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

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

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

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

19 Sec. 18.07.111. DEFINITIONS. In this chapter

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

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

28 (3) "certificate of need" means a written order of the
29 department that sets out the affirmative findings that a proposed

1 activity sufficiently satisfies the plans and criteria prescribed for
2 such an activity by this chapter and by department regulations and
3 that permits the certificate holder to proceed with the activity;

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

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

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

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

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

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

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

1 care facility, ambulatory surgical facility, freestanding emergency
2 care facility, osteopathic facility, independent diagnostic labora-
3 tory, and central service facility; "health care facility" does not
4 include:

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

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

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

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

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

24 Sec. 18.20.050. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.
25 The department may deny, suspend, or revoke a license in a case in
26 which it finds that there has been a substantial failure to comply
27 with the requirements established under AS 08.64.336, AS 18.07.031 -
28 18.07.111, or AS 18.20.060 - 18.20.080.

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

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

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

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

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

22 * Sec. 20. This Act takes effect immediately under AS 01.10.070(c).
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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 15, 1990

SUBJECT: Health Planning
(CSHB 399(HESS))

TO: Representative Johnny Ellis
Chair, House HESS Committee

FROM: Terri Lauterbach *TLL*
Legislative Counsel

Enclosed is a draft of CSHB 399(HESS), as requested by Jim Nordlund. I believe it incorporates the substance of the changes Jim requested. It also makes some other changes Jim did not request, which will be described briefly by this memo.

As you know, this bill was introduced by the Governor's Office and not drafted in the Legal Services Division. As with all governor's bills, I have reviewed this one for style and drafting oversights. Based on that review, there are numerous slight wording changes throughout the CS. I have also added two new bill sections, sections 17 - 18, to deal with references to the Statewide Health Coordinating Council which is abolished by this bill. I have also added more AS sections to the repealer, section 19, to deal with other references to the council. And, I have expanded the bill title to more accurately describe the bill. (The full effect of abolishing the council arguably goes beyond "health planning," as you can see by the additional sections and repealers that I have added to the bill to reflect the council's demise.)

Please be sure to check all the changes to see if your intent has been achieved, and let me know if I can be of further assistance.

TL:pl
WKP3/043

Enclosure

Section by Section Analysis

House Bill 399, 1/23/90

Short Title: "An Act relating to state coordination of community planning and development; and providing for an effective date."

This bill clarifies ambiguities in the Certificate of Need statute and makes other changes to increase the effectiveness of the Certificate of Need program. The Certificate of Need program (CON) provides a framework for regulating certain health care facility activities that may have a significant impact upon the cost of, and accessibility to, quality health care services. The bill clarifies an ambiguity in program coverage so as to assure determination of need for new institutional health services and bed capacity expansions. Technical changes are also included to reflect changes in federal law and DHSS organization.

Section 1. LEGISLATIVE PURPOSE.

This section is self-explanatory, providing legislative guidance that the Certificate of Need program is intended to not only serve as a cost containment mechanism, but also to assure promotion and protection of public health and equitable access to needed care.

Section 2. STATE HEALTH PLANNING AND DEVELOPMENT AGENCY.

The technical changes to this section amend references to rescinded federal law and recognize organizational changes made since 1976.

Section 3. CERTIFICATE OF NEED REQUIRED.

The existing statute requires a CON review for changes to a health care facility that would likely have substantial impact on costs or services. Such changes are categorized within the statute as:

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

There is a \$1,000,000 expenditure threshold given within the same statute section, but the effect of the threshold upon changes in bed capacity and offered services is not clear. The addition or elimination of a service, or a change in bed capacity may initially require little or no expenditure, but can have a substantial impact on the operating costs or accessibility to health care services. The bill clarifies CON program coverage of service and bed capacity changes by applying the dollar threshold to only health facility construction.

This section also requires a review for acquisition of a health care facility. An acquisition oftentimes results in a substantial increase in the capital cost basis upon which facility costs and charges are based.

Section 4. TERMS OF ISSUANCE OF THE CERTIFICATE.

Section 4 provides a basis for addressing the scope of a certificate's validity.

Section 5. MODIFICATION AND TERMINATION OF ACTIVITIES.

Section 5 is amended to require a certificate holder to report any decision to discontinue part or all of the activities authorized under a certificate. Without this change a certificate holder could decide to forgo the services and other activities which the public found most compelling for approval of the application while continuing to develop the less needed parts of the application.

Amendments within this section provide for an orderly process for transfer of a certificate based upon the prospective owners ability to carry out the activities authorized under the certificate and the sale price for a health care facility is limited to the current fair market value.

Section 6. EMERGENCY CERTIFICATES.

This section repeals references to "temporary" certificates and clarifies the purpose of "emergency" certificates." The activities authorized by a certificate of need are not temporary in nature, but result in permanent construction or other substantive changes to the health care system that are not easily reversed. The department has never received an application for or issued a temporary certificate. The provision for "emergency" certificates remains to address urgent conditions (e.g. rebuilding the fire damaged wing of a hospital) and no further certificate of need review will be required for the authorized activity to continue.

Section 7. FINAL DECISION.

This section provides for issuance of a certificate based upon the assertions given in the application and upon the state agency findings established during the review. The amendments to this section clarify the department's authority to issue a certificate for less than the total scope of activity set out in the application. Part of an application may be approved in instances where approval of all requested construction, number of beds, or services is not supported by the application and findings. Flexibility is also provided for instances in which there are competing applications for the same or similar services.

Section 8. PROCEEDINGS FOR MODIFICATION, SUSPENSION, AND REVOCATION.

This section is amended to clarify the standing of health care facilities, competing applicants and the department's Medicaid Rate Advisory Commission to request a hearing for modification, suspension, or revocation of a certificate. In addition, the section updates organizational references and removes a 60 day limitation for completion of hearings requested for revocation, modification, or suspension of a certificate. The requirement is unchanged for hearings to be conducted under the Alaska Administrative Procedures Act (APA, AS 44.62.330 -- 44.62.630), and the time requirements of the APA will be followed.

Section 9. REPORTING REQUIREMENTS, PENALTIES, AND INJUNCTION.

Amendments in this section establish reporting requirements for certificate holders and provide for maintaining the status quo for the time necessary to conduct a hearing. Section .091(c) lists the penalties the department may impose if the department finds, after a formal hearing under the APA, that a person has substantially failed to comply with certificate of need requirements.

Sections .091(e) and .091(f) provide authority for the department to stop further activity if the department finds the activity is subject to CON review and that continued activity would be adverse to the public interest. This allows for maintenance of the status quo while a hearing is conducted.

Section 10. REGULATIONS.

This section provides for regulations for program administration and for establishment of fees for applications submitted for review. Many states have chosen Certificate of Need user fees as a method of enhancing state revenues. Such fees are reimbursable under Alaska's medical assistance programs.

The fees will be set out in regulations and reflect the amount of effort required to complete the review. The Department intends to propose regulations setting fees for submission of a CON application as follows:

Fixed portion			\$ 5,000
plus: Variable portion based			
on proposed capital expenditure amount:			
first \$ 1,000,000	1/2%	(.0050)	
next 9,000,000	1/10%	(.0010)	
over 10,000,000	1/50%	(.0002)	

A \$20,000,000 project would involve the following fees:

flat fee	\$ 5,000
first \$ 1,000,000	5,000
next 9,000,000	9,000
over 10,000,000	<u>2,000</u>
total fee	\$ 21,000

Section 11. DEFINITIONS.

AS 18.07.111 contains several definitions which are expanded or otherwise amended for technical clarification.

The definition for "category of health services" is amended to restrict program coverage for the addition or elimination of a health service to the same service categories used for Medicaid certification and state licensure purposes. In the existing definition the terms "major type, program, unit, division, or department of care..." are used instead. These terms do not provide clear direction on the service changes that would be subject to CON review.

Section 12.

This section provides authority for the department to carry out the denial, suspension, or revocation of a health facility license as described in section 9 above.

Section 13.

Section 13 repeals references to the Statewide Health Coordinating Council. The Council has not been funded for four years and no longer functions as a health planning body.

Section 13 also repeals AS 18.07.041, Standard of Review for Applications for Certificates of Need. This section presently limits consideration of a certificate of need application to "need," "availability," and "quality" issues. In practice, several other considerations must be made including financial ability of the applicant, alternative means of providing proposed services, impact on existing health care systems, impact on health care costs and the preference of the public as expressed in official planning documents, public meetings, etc. Review criteria which address "need," "availability," "quality," and the other aspects of application review will be set out in regulations under the authority provided in section 10 of the bill.

FISCAL IMPACTS

No increased requirement for operational funding will result from passage of this legislation. The substantial capital and operating costs associated with unneeded health facility construction, surplus inpatient beds, and the addition or elimination of health facility services can be avoided.

The CON program, as amended under this bill, provides a rational approach for assessing the need for health care system changes that typically result in substantially increased health care costs. Each of the categorical activities covered under the statute generate costs that are reimbursable through publicly funded medical assistance programs. Health facilities include the associated costs when determining the charges for the services offered.

The bill provides potential for revenue enhancement through program receipts for application fees. The amount of revenue will depend upon the number of and estimated cost of health facility projects proposed.

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SISTERS OF
PROVIDENCE
SERVING IN THE WEST SINCE 1850

DATE: April 16, 1990
TO: Members of the House Finance Committee
RE: HB ³⁹⁹~~366~~

We understand and are most sympathetic with the Department's desire to reduce the costs of health care in Alaska - particularly in the areas of Medicaid and state employee insurance, but we do not believe HB ~~366~~³⁹⁹ is the correct tool.

Providing greater power to the Department of Health and Social Services to involve itself in the day to day activities of health care providers simply expands State bureaucracy and increases administrative costs and of Certificate of Need fees for Providers.

We therefore oppose HB ~~366~~³⁹⁹. If, however, the Legislature continues to consider it, we would argue for numerous amendments to eliminate some of the problems that make the present version of the bill unworkable.

Such changes should be forthcoming from the Health Association of Alaska.

Sister Dona Taylor

Sister Dona Taylor
Administrator
Providence Hospital

STEVE COWPER
GOVERNOR



ec
HB 399

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 8, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to state coordination of health planning and development. The bill makes several substantive changes to the existing certificate of need program in AS 18.07, which provides a framework for regulating certain health care facility activities. The changes will broaden the scope of review by the Department of Health and Social Services (DHSS) and thereby better carry out the purpose of the program, which is generally to contain costs and to promote accessibility to and high quality of health care services. This bill also makes technical changes in AS 18.07 to reflect changes in federal law and DHSS organization, and to clarify ambiguous areas of the current law.

One of the primary revisions made by the bill is to require a certificate of need for any change in bed capacity or category of health services, regardless of cost. AS 18.07.031 currently requires a certificate only for those projects that cost \$1,000,000 or more. Although this threshold amount is appropriate for construction projects, to ensure that only significant projects are reviewed, it is not appropriate for changes in bed capacity or category of health services because such changes can be made at minimal or no cost and yet have a significant impact on the availability and cost of health care services. Section 3.

The bill also adds the requirement that a certificate of need be obtained for the acquisition of a health care facility. Because the purchase price of a health care facility is passed on to consumers, insurance companies,

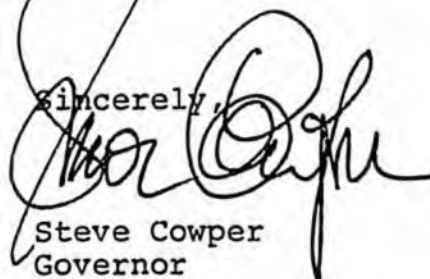
and public programs, there is a strong public concern that the price paid for the facility not exceed the fair market value. Also sec. 3.

Another significant part of the bill repeals AS 18.07.041. Section 13. This statute presently limits review of a certificate of need application to "availability," "quality," and "accessibility" issues. Other considerations, however, such as financial ability of the applicant, public preference, and impact on health care costs, are also important. The department's standard of review will therefore be based on the "purposes" set out in proposed AS 18.07.005. Section 1.

Other changes set out in this bill require department review of certificate transfers, allow conditional or partial approval of certificate applications, and authorize establishment of fees for applications and other services. Existing AS 18.07.091 is repealed and reenacted (sec. 9), and AS 18.20.050 is amended (sec. 12), to allow the department to impose various sanctions for violations of AS 18.07.

Passage of this bill would allow the Department of Health and Social Services to better implement the certificate of need program. I urge your support and passage of this important legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name below.

Steve Cowper
Governor