

H B

399

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 8, 1990

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3/16/90

The HEALTH, EDUCATION, & SOCIAL SERVICES 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 CSHB 399 (HESS) 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) 1/8/90 DHSS
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

		Do Not Pass	No Rec	Amend
<u>[Signature]</u>			X	
<u>[Signature]</u>		X		
<u>[Signature]</u>			-	
<u>Cheri Davis</u>			X	
<u>Mark Boyer</u>			X	

[Signature]
Chairman's Signature

3/14/90

To: Walt Furnace, House of Representatives

From: Steve Berkshire, North Star Hospital

Re: SCHB 399

Thanks for the copy of the bill. While there have been changes, I still have serious questions.

1. Page 1. Line 29. The legislation still does not define what "rededication of assets," means. Does it mean changing from a nursing home to an acute care hospital? Or does it mean changing the make up of services offered? For example a hospital that offers all general medical/surgical services decides to become only an eye surgery hospital--is that a rededication? Would the State consider what North Star was allowed to do a rededication? That is add psychiatric services to its existing Specialty License?

We would agree that changing the entire direction of a hospital as a rededication where a new type of license is required; however, changing scope of services within a license category should not be a rededication.

There needs to be a definition; otherwise it leaves too much up to the regulators.

2. Page 2. Line 6 and 7. Dealing with adding or eliminating a service. There is no dollar limit. We believe the requirement should be the same as a capital expenditure--\$1,000,00. If operating expenses are considered, that amount should be no less than \$500,000 added on to existing expenses. There needs to be some floor so the State isn't reviewing all changes. Actually additions or eliminations should only be capital expenses.

3. Page 2. Line 8. Still object to the State being involved in acquisitions. The issue of fair market value (page 3, line 4 & 5.) should be dealt with under Medicaid payment rules not CON rules.

4. Page 4. Section 9. This is much better than the original HB 399. It does at line 21 state that another provider had to be proposing the service within the previous year. That prevents others entering the process simply to prevent competition.

5. Section 13. Beginning on page 6 needs to also preserve the applicant's right to seek injunctive relief. This section allows the State to take action, but the provider needs the same right if the State takes adverse action. This may already be assured, but if it isn't it needs to be there.

6. Page 8. Section 15. The definition of "category of health services," should be clarified that this applies to all services regardless of whether facility is licensed or not.

On page 9 under "health care facility," it now includes all providers whether licensed or not and whether publically funded or not. Therefore, we assume that API is now required to have a CON, Native Health Corporations need CON's, facilities such as Akeela House, Phillips Recovery, Circle S Ranch, Starting Point, Community Mental Health Centers, Lakeside, and others would need CON's.

If the definition does not include these other providers than we still object.

If they are included than the two definitions need to correspond.

7. On page 10. Lines 1--3. Still excluded Pioneer Homes. They should also have to prove need since they compete with other long term care facilities. This is especially true since they are moving away from residential care and becoming nursing homes.

Walt, we sill believe CON is unnecessary. The issue of Medicaid payments for capital and operations should be dealt with under payment rules.

Hope these comments help. Would really like repeal us more restrictions.

STEVE BERKSHIRE, NORTH STAR HOSPITAL

STATE OF ALASKA
THE LEGISLATURE

HOUSE STATE CAPITOL
JUNEAU ALASKA 99801
907 465 3810

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 15, 1990

SUBJECT: Health Planning
(CSHB 399(HESS))

TO: Representative Johnny Ellis
Chair, House HESS Committee

FROM: Terri Lauterbach *TL*
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.

CC

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Certificate of Need

Agency Affected: Health & Social Services
BRU: Administrative Services

Sponsor: Rules Committee
Requestor: Governor

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-
---------	-----	-----	-----	-----	-----	-----

REVENUE	20.0	20.0	21.0	21.0	22.0	22.0
---------	------	------	------	------	------	------

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
Division: Administrative Services

Phone: 465-3015
Date: 11/8/89

Approved by Commissioner: Sharon Clark, Acting
Agency: Health & Social Services

Date: 11/9/89

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

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	<u>2,000</u>
total fee	\$ 21,000

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.

STEVE COWPER
GOVERNOR



ec
14B399

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,

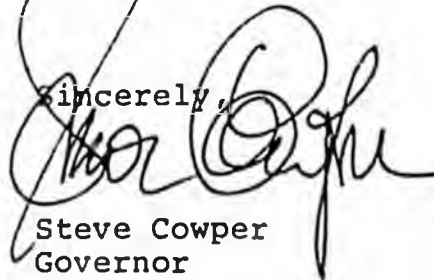
and public programs, there is a strong public concern that the price paid for the facility not exceed the fair market value. Also sec. 3.

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

CHAPTER 07. CERTIFICATE OF NEED

Section	Section
10. Activities requiring a certificate of need	80. Hearing and appeal
20. Emergency and temporary certificates of need	90. (Repealed)
30. Letter of intent	95. Modification, suspension, or revocation of a certificate of need
40. Application submission	100. Transfer of certificate of need prohibited
50. Review for completeness	105. Periodic reports
60. Review process	110. (Repealed)
65. Expedited review	120. (Repealed)
70. Decision by commissioner	130. Definitions

7 AAC 07.010. ACTIVITIES REQUIRING A CERTIFICATE OF NEED. (a) A certificate of need is required before any person undertakes any of the following activities:

(1) any capital expenditure in excess of \$150,000 for the excavation, erection, building, alteration, extension, reconstruction, improvement, repair, purchase or other development of a health care facility, including lease or purchase of equipment, and including:

(A) any donation or lease by any person to a health care facility for any of these purposes, in excess of \$150,000 in cash or fair market value;

(B) the cost of any studies, surveys, designs, plans, working drawings, site acquisitions and preparation, and other activities essential to an activity stated in this paragraph;

(2) any change within a two-year period in the licensed bed capacity of a health care facility amounting to 10 beds or 10 percent, whichever is the lesser, which increases or decreases the number of beds of a health care facility or redistributes beds among different categories of service; and

(3) any addition of a major type, program, unit, division, or department of care in or through a health care facility which has not been offered in or through the health care facility or any elimination of a major type, program, unit, division, or department of care in or through a health care facility which has been offered in or through the health care facility.

(b) Upon request, and after the appropriate health systems agency has been provided an opportunity to comment on the request, a health care facility in existence or under construction before July 1, 1977 will be granted a certificate of need approving the continuous undertaking of those activities. (Eff. 10/26/77, Register 64; am 8/13/80, Register 75)

Authority: AS 18.07.031
AS 18.07.101
Sec. 4, ch. 175 SLA 1976

7 AAC 07.020. EMERGENCY AND TEMPORARY CERTIFICATES OF NEED. (a) The commissioner will grant or deny an emer-

gency or temporary after a review of a s determines that it i

(b) Before the com tion, each affidavit r of need must be revl forth by AS 18.07.07 and 42 CFR 123.47 promptly submit its sioner. (Eff. 10/26/77)

Authority: AS 18.07.041
AS 18.07.071

7 AAC 07.030. LI tends to apply for a c ess than 60 days nor certificate of need to systems agency, exce or temporary certific will, in the commissi upon a showing of go of any written recom systems agency, exce tion.

(b) Each letter of (1) a clear, comp posed to be under (2) an estimate (3) an estimated posed activity.

(c) The state agen days after receipt of letter of intent, statir 18.07 and the reason also forward the appr essary to make appl

(d) A preapplication between a prospective upon request of the s been advised that a p pose of the preapplica cal assistance from th in the actual prepara make available all pe to assist the applicat

EED

...ion, or revoca-
... of need
... te of need pro-

CERTIFICATE

... any person

... the excava-
... ruction, im-
... health care
... and including:
... care facility
... cash or fair

... ns, working
... er activities

... nsed bed ca-
... r 10 percent,
... e number of
... ng different

... sion, or de-
... hich has not
... ny elimina-
... ment of care
... offered in or

... tems agency
... est, a health
... 1, 1977 will
... undertaking
... Register 75)

... CERTIFI-
... ny an emer-

gency or temporary certificate of need as provided by AS 18.07.071 after a review of a sponsor's affidavit or, when in his discretion, he determines that it is necessary, after a formal hearing.

(b) Before the commissioner will take action under (a) of this section, each affidavit requesting an emergency or temporary certificate of need must be reviewed by the state agency under the criteria set forth by AS 18.07.071, 42 CFR 123.409 — 123.410 (adopted 4/2/79) and 42 CFR 123.411 (adopted 1/21/77). The state agency shall promptly submit its findings and recommendation to the commissioner. (Eff. 10/26/77, Register 64; am 8/13/80, Register 75)

Authority: AS 18.07.041 AS 18.07.101
AS 18.07.071 AS 44.17.010

7 AAC 07.030. LETTER OF INTENT. (a) Any person who intends to apply for a certificate of need shall mail a letter of intent not less than 60 days nor more than one year before the application for a certificate of need to the state agency and the appropriate health systems agency, except in the case of an application for an emergency or temporary certificate of need. The requirement of a letter of intent will, in the commissioner's discretion, be waived by the commissioner upon a showing of good cause by the applicant and after consideration of any written recommendation submitted by the appropriate health systems agency, except for applications which propose new construction.

(b) Each letter of intent must contain

- (1) a clear, complete, and current description of the activity proposed to be undertaken;
- (2) an estimate of the cost of the proposed activity; and
- (3) an estimated starting date and completion date for the proposed activity.

(c) The state agency shall furnish written notification within 20 days after receipt of a letter of intent to the person submitting the letter of intent, stating whether the proposed activity is subject to AS 18.07 and the reasons for the determination. The state agency shall also forward the appropriate forms, information, and instructions necessary to make application.

(d) A preapplication conference before submission of an application between a prospective applicant and the state agency will be held upon request of the state agency or a prospective applicant who has been advised that a proposed activity is subject to AS 18.07. The purpose of the preapplication conference is to obtain guidance and technical assistance from the state agency. The state agency may not assist in the actual preparation or completion of the application, but shall make available all pertinent records, forecasts, plans, and other data to assist the applicant in preparing a full and accurate application.

The appropriate health systems agency will be invited by the state agency to participate in the preapplication conference. (Eff. 10/26/77, Register 64; am 8/13/80, Register 75)

Authority: AS 18.07.101

7 AAC 07.040. APPLICATION SUBMISSION. (a) Each application for a certificate of need must be made in writing to the state agency on forms provided by the state agency. The content of an application must be limited to:

- (1) a timetable for completing the proposed activity;
- (2) a listing of the total proposed amount of capital expenditures necessary to complete the proposal; and
- (3) the information necessary for the state agency to determine whether the criteria applicable to the proposed activity as set out in AS 18.07, 42 CFR 123.409 — 42 CFR 123.410 (adopted 4/2/79) and 42 CFR 123.411 (adopted 1/21/77) have been met.

(b) An applicant shall submit four copies of the application to the state agency and two copies to the appropriate health systems agency. The state agency shall provide one copy to the Alaska State Library in Juneau.

(c) An applicant may withdraw the application at any time during the review process by written notification to the state agency. (Eff. 10/26/77, Register 64; am 8/13/80, Register 75)

Authority: AS 18.07.101

7 AAC 07.050. REVIEW FOR COMPLETENESS. (a) The state agency shall review each application received to determine if it is complete. Within 20 days after receipt of the application, the state agency shall

- (1) notify the applicant by mail that the application has been accepted as complete, or
- (2) request additional information as necessary to complete the application; the applicant will have 60 days to submit the requested information or the application will be denied; any application denied on the grounds of untimely submission of requested information may be resubmitted with the requested information and an explanation of why it was not timely filed; once the additional information is received by the state agency, and it determines that there was good cause for the late submission, if any, the state agency shall notify the applicant within 20 days that the application is complete; an applicant whose application is denied may submit a new application;

(b) Upon acceptance of an application as complete, the state agency shall provide reasonable written notification to the public, each health

care facility located in the area affected, and to:

- (1) acceptance of the application;
- (2) the proposed activity;
- (3) the name of the applicant;
- (4) the period of time for which the activity is being proposed according to the schedule of the meeting or hearing provided in sec. 6
- (5) the manner in which the activity will be carried out.

(c) The state agency shall publish a notice in two copies in the appropriate health systems agency register under this section and in the newspaper of general circulation in the area affected of the information contained in the notice in two copies. (Eff. 10/26/77, Register 64; am 8/13/80, Register 75)

Authority: AS 18.07.101

7 AAC 07.060. (a) The state agency, in its discretion, may suspend the application for a period not to exceed 60 days if the application is incomplete. The state agency shall advise the health systems agency of the suspension. The suspension shall terminate on the date of completion of the application in accordance with sec. 6. The state agency shall advise the appropriate health systems agency of the suspension. The suspension shall be proposed by the applicant.

(b) The state agency shall conduct an analysis and recommendation after the date the application is complete. The state agency shall publish findings regarding the application in the health systems agency register. 123.410 (adopted 4/2/79) and 42 CFR 123.411 (adopted 1/21/77) have been met.

(c) The appropriate health systems agency and a recommendation shall be submitted to the state agency, to the public, within 20 days after the date the application is complete. The state agency shall provide reasonable written notification to the public, each health systems agency, and the appropriate health systems agency of the suspension. The suspension shall be proposed by the applicant. (b) of this section

the state
10/26/77,

ch appli-
the state
an appli-

nditures

etermine
set out in
2/79) and

on to the
s agency.
library in

e during
cy. (Eff.

he state
if it is
he state

has been

lete the
requested
tion de-
informa-
and an
al infor-
at there
cy shall
omplete;
applica-

agency
a health

care facility located in the health service area, any person directly affected, and to each person on the state agency mailing list of:

- (1) acceptance of the application;
- (2) the proposed schedule for the review;
- (3) the name of any health systems agency participating in the review;
- (4) the period within which a person may request a public meeting according to sec. 60(e) of this chapter; and
- (5) the manner of notification of the time and place of any public meeting or hearing to be held concerning the application, as provided in sec. 60(e).

(c) The state agency shall notify the public and persons directly affected of the information listed in (b) of this section by publication of a notice in two consecutive issues of at least one newspaper of general circulation in the state and one newspaper of general circulation in the appropriate health service area. Other notifications required under this section must be sent by mail to the person's last known address. (Eff. 10/26/77, Register 64; am 8/13/80, Register 75)

Authority: AS 18.07.101

7 AAC 07.060. REVIEW PROCESS. (a) In the commissioner's discretion, the agency shall defer commencement of the review process for a period not to exceed 60 days after the determination that the application is complete to enable the state agency and the appropriate health systems agency to receive and consider concurrently applications from each person who has submitted a letter of intent in accordance with sec. 30 of this chapter proposing an activity within the appropriate health service area which is similar to the activity proposed by the applicant.

(b) The state agency shall review the application and submit an analysis and recommendation to the commissioner within 90 days after the date the notice is sent to the applicant stating that the application is complete. The state agency shall make specific written findings regarding criteria set out in AS 18.07, 42 CFR 123.409 — 123.410 (adopted 4/2/79) and 42 CFR 123.411 (adopted 1/21/77) in formulating its recommendation.

(c) The appropriate health systems agency shall submit any findings and a recommendation to the commissioner, with copies to the state agency, to the applicant, and to others upon request, within 60 days after the date the notice is sent to the applicant stating that the application is complete. These findings and recommendations are subject to the same requirements as to content as the findings and recommendations submitted by the state agency to the commissioner under (b) of this section.

periods set in (b) and 30 days, for

demonstrating health systems agency findings and adopt criteria

within which to

public meeting by more than 30 days before announcing a public meeting schedule such as all give public 30 days before the meeting, a brief description of the date, time, and location of the meeting on the state agency's last known address. 50(c) of this chapter shall not apply under this

notify by mail any health systems agency formal findings if reasonable

the health systems agency under this chapter 75)

person planning to obtain a determination of an expedited review shall submit a written request to the commissioner. The commissioner shall consult with the health systems agency and receive its written findings. A copy of the determination may be provided in writing

to an applicant's written request for an expedited review within 20 days after the request is received.

(b) The request for an expedited review must be set out in a letter of intent as submitted under sec. 30 of this chapter and state the reason for requesting an expedited review.

(c) The following criteria will be followed to determine whether an expedited review is appropriate:

- (1) a request is for reissuance of a certificate of need;
- (2) the proposed activity would replace existing equipment having the same basic purpose and scope and would not substantially increase the service volume capability or to advance substantially the technological capability of the health care facility;
- (3) the request is for approval of a variance in scope, time schedule of completion, or cost of a previously certificated activity;
- (4) the proposed activity is to comply with the requirements of a governmental agency;
- (5) the variation in service is caused by the availability of professional health personnel.

(d) The expedited review process will not exceed 50 calendar days from the date on which the state agency determines, in accordance with sec. 50 of this chapter, that the application is complete. The appropriate health systems agency shall submit written findings and recommendations to the state agency within 30 days after the beginning of the review process. The state agency shall complete its review and the commissioner will make a decision whether to issue a certificate of need within 20 days after receipt of the appropriate health systems agency review. (Eff. 8/13/80, Register 75)

Authority: AS 18.07.071
AS 18.07.101

7 AAC 07.070. DECISION BY COMMISSIONER. (a) The decision of the commissioner to issue or deny a certificate of need will be in writing, stating the maximum capital expenditure which may be obligated for the proposed activity, the bed capacity, the type of service as set out in sec. 10 of this chapter, and the completion date. The following will be considered:

- (1) the findings and recommendations of the state agency and the appropriate health systems agency;
- (2) the record of any public meeting held in accordance with sec. 60(e) of this chapter;
- (3) state and federal laws and regulations; and
- (4) the current state health plan.

(b) The commissioner will mail a copy of the decision and findings to the applicant and will advise the applicant of the availability of a hearing under sec. 80 of this chapter.

(c) The commissioner will mail copies of the decision and findings to the appropriate health systems agency, to the Regional Health Administrator of the U.S. Public Health Service, and to others upon request. The public will be notified of the commissioner's decision in the same manner as provided in sec. 50(c) of this chapter.

(d) The commissioner's decision and findings will include a written statement of the reasons for a decision that is inconsistent with a recommendation of the appropriate health systems agency, the goals of the applicable health systems plan, and the priorities of the applicable health systems agency's implementation plan adopted under P.L. 96-79, sec. 1513(b). (Eff. 10/26/77, Register 64; am 8/13/80, Register 75)

Authority: AS 18.07.041
AS 18.07.101

7 AAC 07.080. HEARING AND APPEAL. (a) An applicant dissatisfied with a decision of the commissioner to grant, deny, or modify a certificate of need is entitled to a hearing if the request for a hearing is made in writing and received by the commissioner, no later than 30 days after receiving the commissioner's decision. The hearing will be conducted in accordance with AS 44.62.330 — 44.62.630.

(b) Any person other than the applicant who is dissatisfied with a decision of the commissioner to grant, deny, or modify a certificate of need may request a hearing by making a written request which is received by the commissioner no later than 30 days after the last newspaper notice published under sec. 70(c) of this chapter. Hearings conducted under this subsection will be governed by the provisions of (a) of this section. The commissioner will grant the request for a hearing if good cause is demonstrated. Good cause is considered to have been demonstrated if the request

(1) presents significant relevant information not previously considered by the state agency;

(2) demonstrates that there have been significant changes in factors or circumstances relied upon by the commissioner in reaching his decision;

(3) demonstrates that the state agency or the commissioner has failed to follow procedures stated in this chapter; or

(4) provides such other bases for a hearing as the commissioner determines is good cause.

(c) Hearings under (a) of this section and hearings under (b) of this section will, in the commissioner's discretion, be consolidated.

(d) Notice of the time and place of a hearing under this section must be mailed to the person requesting the hearing, to the applicant, and to the appropriate health systems agency no later than 15 days before the hearing. Notice to others who request notice must be mailed no

later than 15 days before the time, and must be made if a request is made later.

(e) No fee for conducting or other person at work.

(f) Repealed 6/3/88 (Eff. 10/26/77, Register 106)

Authority: 18.07.101

7 AAC 07.090. TELEPHONE 8/13/80.

7 AAC 07.095. MODIFICATION OF A CERTIFICATE OF NEED activity authorized by the state, or the cost of the increase by more than the approved maximum cost. The applicant shall make written request for the issued certificate of need from the original certificate as provided for in section 70(c) of this chapter. The commissioner determines a new certificate of need warrants a new certificate of need under this chapter is required.

(b) Modification, suspension, or revocation of a certificate of need will be handled in accordance with section 70(c) of this chapter.

(c) A decision of the commissioner to grant, deny, or modify a certificate of need will be handled in accordance with this chapter. (Eff. 8/13/80)

Authority: AS 18.07.081
AS 18.07.091
AS 18.07.101

7 AAC 07.100. TELEPHONE PROHIBITED. (a) No fee for conducting or other person at work.

(b) Repealed 8/13/80 (Eff. 10/26/77, Register 106)

Authority: AS 18.07.101

7 AAC 07.105. PERMITS a letter of intent to construct a facility under this chapter or who

later than 15 days before the hearing if they have requested it by that time, and must be mailed to them promptly upon request if the request is made later than that.

(e) No fee for conducting the hearing may be charged the applicant or other person at whose request the hearing was held.

(f) Repealed 6/3/88.
(Eff. 10/26/77, Register 64; am 8/13/80, Register 75; am 6/3/88, Register 106)

Authority: 18.07.101

7 AAC 07.090. TERM OF CERTIFICATE OF NEED. Repealed 8/13/80.

7 AAC 07.095. MODIFICATION, SUSPENSION, OR REVOCATION OF A CERTIFICATE OF NEED. (a) If the scope of an activity authorized by a certificate of need varies or is expected to vary, or the cost of the proposed activity increases or is expected to increase by more than 15 percent in excess of inflation costs above the approved maximum capital expenditure, the holder of that certificate shall make written request to the commissioner for a modification of the issued certificate of need. If the commissioner determines the variation from the original application to be minimal, an expedited review as provided for in sec. 65 of this chapter will be conducted. If the commissioner determines that the variation from the original application warrants a new application, a full application and review under this chapter is required.

(b) Modification, suspension, or revocation of a certificate of need will be handled in accordance with AS 18.07.081.

(c) A decision of the commissioner to modify, suspend, or revoke a certificate of need will be publicized in accordance with sec. 50(c) of this chapter. (Eff. 8/13/80, Register 75)

Authority: AS 18.07.081
AS 18.07.091
AS 18.07.101

7 AAC 07.100. TRANSFER OF CERTIFICATE OF NEED PROHIBITED. (a) A certificate of need is not transferable.

(b) Repealed 8/13/80.
(Eff. 10/26/77, Register 64; am 8/13/80, Register 75)

Authority: AS 18.07.101

7 AAC 07.105. PERIODIC REPORTS. (a) Any person who submits a letter of intent regarding an activity which is subject to sec. 10 of this chapter or who is granted a certificate of need shall provide the

state agency with a written report on the development of the activity at least once every six months until the activity has been completed or abandoned.

(b) The state agency shall prepare and publish an annual report on the status of letters of intent, applications, and reviews. It must include a general statement of the findings and decisions for each completed review.

(c) Health care facilities shall provide the state agency with information regarding available health care services and the rates schedule when requested on forms which are provided by the state agency. (Eff. 8/13/80, Register 75)

Authority: AS 18.07.101

7 AAC 07.110. NOTICE. Repealed 8/13/80.

7 AAC 07.120. ABBREVIATED REVIEW. Repealed 8/13/80.

7 AAC 07.130. DEFINITIONS. In this chapter, unless the context indicates otherwise,

(1) "applicant" means any person applying for a certificate of need;

(2) "appropriate health systems agency" means the health systems agency in whose health systems area an activity described in sec. 10 of this chapter has been or will be undertaken;

(3) "capital expenditure" means an expenditure made by or on behalf of a health care facility which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance;

(4) "certificate of need" means the official order of the commissioner signifying approval of a proposed activity as set out in sec. 10 of this chapter;

(5) "commissioner" means the commissioner of health and social services;

(6) "days" means calendar days;

(7) "health care facility" means any of those entities listed in AS 18.07.111, as defined, where appropriate, in 42 CFR 123.401 (adopted 1/21/77);

(8) "health maintenance organization" means a private or public organization (exclusive of insurance companies or similar associations whose primary function is the payment of costs or charges incurred by or on behalf of its policy holders for health services received by them) authorized by Alaska statutes to provide services through a health care facility by providing or otherwise making available to enrolled participants, at least the following basic health care services: usual physician services, hospitalization, laboratory,

x-ray, emergency and which

(A) compensation for these basic services provided at a periodic rate based on

(B) provide physicians with information, or through one or more group health plans, individual health

(9) "hospital" means a facility providing inpatient hospital services and treatment, and care of injured, disabled

(10) "person" means any individual, partnership, corporation, trust, or other subdivision or entity of the State of Alaska or any other entity recognized by law

(11) "person" means

(A) the state

(B) the commissioner

(C) member of a health care organization

(D) health care organization which the commissioner has determined is similar to those listed in this chapter, and a certificate of need

(E) any health care organization

(F) any health care organization planning for the future in which a certificate of need is required

(12) "public health" means a health care organization which is held by the state or a political subdivision of the state

(13) "state" means the State of Alaska and its political subdivisions

and development in AS 18.07.001

activity completed or

x-ray, emergency and preventive services, and out-of-area coverage, and which

report on must in each com-

(A) compensates patients or providers (except for copayments) for these basic health care services and any other health care services provided to enrolled participants on a predetermined periodic rate basis; or

with information scheduled to agency.

(B) provides physicians' services primarily directly through physicians who are either employees or partners of the organization, or through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual basis;

8/13/80.

(9) "hospital" means an institution primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation of injured, disabled, or sick persons;

is the con-

(10) "person" includes, in addition to the entities specified in AS 01.10.060(7), a health maintenance organization, estate, political subdivision or instrumentality (including a municipal corporation) of the State of Alaska, the State of Alaska, and any other legal entity recognized by the State of Alaska;

certificate of

(11) "person directly affected" means

health systems described in

(A) the state agency;

(B) the commissioner;

able by or on accepted expense of

(C) members of the public to be served by the activity for which a certificate of need is required;

the committee in sec. 10

(D) health care facilities located in the health service area in which the activity is proposed to occur which provide services similar to the proposed activity or which have indicated to the commissioner, by filing a letter of intent under sec. 30 of this chapter, an intention to engage in the activity for which the certificate of need is requested;

health and social

(E) any agency which sets or regulates the rates charged by health care facilities;

listed in AS FR 123.401

(F) any health systems agency which is engaged in health planning for the health service area within which the activity for which a certificate of need is requested would occur or for a health services area contiguous to that area;

state or public health services provided by or on behalf of the state or a local health department, laboratory,

(12) "public meeting" means a meeting open to the public which is held by the state agency for the purpose of gathering or disseminating information relative to a request for a certificate of need;

(13) "state agency" means the division of state health planning and development, referred to as the office of planning and research in AS 18.07.021. (Eff. 10/26/77, Register 64; am 8/13/80, Register 75)

Authority: AS 18.07.101
AS 18.07.111
AS 44.17.020

CHAPTER 09. DESIGN AND CONSTRUCTION OF HEALTH FACILITIES

Section	Section
10. Requirement of licensure	100. Site survey
20. Qualification for license	110. Soil investigation
30. Application for license	120. Building specifications
40. Action on application	130. First-stage plans and specifications
50. Applicable codes and standards	140. Second-stage plans and specifications
60. Compliance with local codes	150. Third-stage plans and specifications
70. Issuance of construction license	160. Inspection by licensee
80. Terms of construction license	170. Definitions
90. Earthquake provisions	

7 AAC 09.010. REQUIREMENT OF LICENSURE. No person or governmental unit, except the federal government acting severally or jointly with a person or other governmental unit, may undertake construction of a health facility in Alaska until it has obtained a construction license from the department. (Eff. 4/28/77, Register 62)

Authority: AS 18.20.030
AS 18.20.060

7 AAC 09.020. QUALIFICATION FOR LICENSE. A construction license for a health facility will be granted by the department only upon its review and approval of the plans and specifications for the project, and upon the acquisition by the applicant of a certificate of need when required under the provisions of AS 18.07.031. (Eff. 4/28/77, Register 62)

Authority: AS 18.07.031
AS 18.20.060
AS 18.20.080

7 AAC 09.030. APPLICATION FOR LICENSE. Upon request, the department will furnish an application form for a construction license to an interested person or governmental unit. If the application is for construction of a new facility, alteration of bed capacity of an existing facility, or the addition of a category of service to an existing facility, after July 1, 1977, the applicant must also show that he has obtained a certificate of need from the Office of Planning and Research of the department. An application for a construction license must be accompanied by the license fee of \$10. The continued effectiveness after July 1, 1977, of a license issued before that date is conditioned upon the applicant obtaining in a timely fashion after July 1, 1977, a certificate of need if it is required under AS 18.07.031. (Eff. 4/28/77, Register 62)

Authority: AS 18.07.031
AS 18.20.030
AS 18.20.060

7 AAC 09.040. AC mation required by th cant will be given an required information h need if required by AS cant to submit the re: required by secs. 100 : 62)

Authority: AS 18.07.031
AS 18.20.060
AS 18.20.080

7 AAC 09.050. AP Plans and specification ted to the department not be approved unles: the following codes ar
(1) Alaska Fire Se
Division of Fire Pr
(2) Life Safety Co
(3) National Elec
tion, 1975;
(4) Uniform Build
Officials, 1976;
(5) Uniform Plurr
ing Officials, 1973;
(6) Uniform Mech
ing Officials, 1973;
(7) American Nat
Dumbwaiters, Ame
(8) Minimum Rec
Hospital and Medic
74-4000, Departmer
27, 1974. (Eff. 4/28

Authority: AS 18.20.060

Editor's notes. — The quirements referred to in t are available as follows:
1. The Alaska Fire Safet Department of Public Safe Fire Protection, 1971, whic in paragraph (1), is availa tion of Fire Protection. 1

STATE OF ALASKA THE LEGISLATURE

POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811
907-463-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. HESS 2-13-90

H. HESS 3-15-90

H. HESS 3-16-90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE HESS COMMITTEE

2 CS FOR HOUSE BILL NO. 399 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

29 (1) make a capital expenditure, including a rededication of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (2) comply with state licensure standards; or

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

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

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

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

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

1 activities for which the application was made;

2 (2) deny a certificate of need;

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

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

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

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

1 with AS 44.62.330 - 44.62.630.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Sec. 18.07.111. DEFINITIONS. In this chapter

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

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

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

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

1 continue until it is completed,

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

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

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

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

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

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

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

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

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

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

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

20 Sec. 18.20.050. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.
21 The department may deny, suspend, or revoke a license in a case in
22 which it finds that there has been a substantial failure to comply
23 with the requirements established under AS 08.64.336, AS 18.07.031 -
24 18.07.111, or AS 3.20.060 - 18.20.080.

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

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

1 COUNCIL ESTABLISHED UNDER AS 18.07.011.]

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

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

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

18 * Sec. 20. This Act takes effect immediately under AS 01.10.070(c).
19
20
21
22
23
24
25
26
27
28
29