

HB

418

SENATE FINANCE COMMITTEE REPORT

DATE: 5/1/90

FURTHER:

DATE TURNED INTO OFFICE: 5/5/90

The Finance Committee considered

HB 418

"An Act related to quality of care in nursing facilities; establishing a nursing facility resident security fund; and providing for an effective date."

and recommended:

- replace with _____ CS _____ same title
- or adopt _____ CS _____ new title
- attached amendment(s) technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):
Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:
Dept/Date:

fiscal note(s) _____

zero fiscal note(s) DH:gg 1/15/90

SIGNING DO PASS:

Peace

[Signature]

OTHER RECOMMENDATIONS:

1. [Signature] Do Pass 2. [Signature]
Co-Chairs: Signatures and Recommendations

CC

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to Quality Nursing Care
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Health & Social Services
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
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)

Will be ZERO For 1990

Prepared by: Kim Busch, Director *Kim Busch* Phone: 465-3355
Division: Division of Medical Assistance Date: 1/15/90
Approved by Commissioner: Myra M. Munson *Myra M. Munson* Date: 1/15/90
Agency: Department of Health & Social Services

Distribution (by preparer):

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

Adopted

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 418

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act related to quality of care in nursing facil-
7 ities; establishing a nursing facility resident
8 security fund; and providing for an effective date."

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

10 * Section 1. AS 18.20.040 is amended to read:

11 Sec. 18.20.040. ISSUANCE AND RENEWAL OF LICENSE AND POSTING.

12 (a) Upon receipt of an application for license and the license fee,
13 the department shall issue a license if the applicant meets the re-
14 quirements established under AS 18.20.060 - 18.20.080. If the appli-
15 cant does not meet the requirements established under AS 18.20.060 -
16 18.20.080 but makes continued efforts to comply with them, the depart-
17 ment may grant a temporary or provisional license for a reasonable
18 period of time. Except as provided in (b) of this section, a [A]
19 license[, UNLESS SUSPENDED OR REVOKED,] is renewable annually without
20 charge upon filing by the licensee, and approval by the department of
21 an annual report on the uniform date and containing the information in
22 the form the department prescribes by regulation. Each license issued
23 is for the premises and person or governmental unit named in the
24 application and is not transferable or assignable except with the
25 written approval of the department. Licenses shall be posted in a
26 conspicuous place on the licensed premises.

27 (b) A license is not renewable if (1) it has been suspended or
28 revoked under AS 18.20.050, or (2) regarding a nursing facility as
29 defined in AS 18.20.390, the department has taken action under

1 AS 18.20.310(a)(5).

2 * Sec. 2. AS 18.20.050 is amended to read:

3 Sec. 18.20.050. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.
4 The department may deny, suspend, or revoke a license in a case in
5 which it finds that there has been a substantial failure to comply
6 with the requirements established under AS 08.64.336 or AS 18.20.060 -
7 18.20.080. The license of a nursing facility, as defined in
8 AS 18.20.390, also may be suspended or revoked by the department under
9 AS 18.20.310(a)(5).

10 * Sec. 3. AS 18.20 is amended by adding new sections to read:

11 ARTICLE 4. QUALITY OF CARE IN NURSING FACILITIES.

12 Sec. 18.20.300. STATE POLICY. It is the policy of the state to
13 ensure that the quality of care in nursing facilities in this state is
14 maintained at a high standard in accordance with applicable state and
15 federal law and regulations and to ensure the health, safety, and
16 quality of life of nursing facility residents in Alaska is maintained
17 or enhanced.

18 Sec. 18.20.305. NURSING FACILITY REGULATIONS. The department
19 shall adopt necessary regulations to implement AS 18.20.300 -
20 18.20.380 in accordance with the Administrative Procedure Act
21 (AS 44.62). The department shall, by regulation, specify criteria as
22 to when and how the sanctions specified in AS 18.20.310 will be ap-
23 plied. The criteria shall provide for the imposition of incrementally
24 more severe penalties for deficiencies that are uncorrected or perva-
25 sive, or that present a threat to the health, safety, or welfare of
26 nursing facility residents.

27 Sec. 18.20.310. SANCTIONS FOR NONCOMPLIANCE. (a) If the de-
28 partment finds that a nursing facility, or a partner, officer, direc-
29 tor, owner of five percent or more of the nursing facility's assets,

1 or managing employee of the nursing facility substantially failed or
2 refused to comply with AS 08.68.340 - 08.68.390, AS 08.70.010 -
3 08.70.190, AS 18.20.010 - 18.20.130, AS 47.07.010 - 47.07.900, or with
4 a regulation adopted under any of those statutes, or, for a nursing
5 facility that provides medicaid services under AS 47.07.010 - 47.07.-
6 900, failed or refused to comply with the medicaid requirements of 42
7 U.S.C. 1396r (Title XIX of the Social Security Act, as amended) or a
8 regulation adopted under that statute, the department may take the
9 following actions:

10 (1) ban the admission of new residents to the nursing facil-
11 ity;

12 (2) as provided in AS 18.20.320, deny payment under
13 AS 47.07.010 - 47.07.900 and AS 47.25.120 - 47.25.300 for any medicaid
14 or general relief-medical resident admitted to the nursing facility
15 after notice by the department of denial of payment; residents who are
16 eligible for medicaid or general relief-medical are not responsible
17 for payment when the department takes action under this paragraph;

18 (3) assess a civil fine in accordance with AS 18.20.340;

19 (4) suspend or terminate the nursing facility's participa-
20 tion in the medicaid program;

21 (5) suspend, revoke, or refuse to renew the nursing facili-
22 ty's license issued under AS 18.20;

23 (6) seek an appointment of temporary administration as
24 provided in AS 18.20.360 or of a receiver under AS 18.20.370;

25 (7) in case of an emergency, seek an order from the court
26 either to close the nursing facility or to transfer residents from
27 that facility, or both.

28 (b) An order of the department imposing a sanction described in

29 (1) (a)(1), (4), or (5) of this section takes effect

1 immediately upon service of the order on the nursing facility;
2 however, if the facility can demonstrate to the department's
3 satisfaction that the deficiencies prompting the order do not
4 jeopardize the health or safety of facility residents or seriously
5 limit the nursing facility's capacity to provide adequate care, the
6 department's order takes effect 10 days after service;

7 (2) (a)(2) or (3) of this section takes effect 10 days
8 after service of the order on the nursing facility.

9 (c) A hearing may be requested under AS 18.20.330 regarding a
10 sanction imposed by the department under this section.

11 Sec. 18.20.320. DENIAL OF PAYMENT. The department shall deny
12 payment under AS 47.07.010 - 47.07.900 or AS 47.25.120 - 47.25.300 to
13 a nursing facility

14 (1) that is not in compliance, and, for the preceding three
15 months, has not been in compliance, with the requirements of 42 U.S.C.
16 1396r (Title XIX of the Social Security Act, as amended), and regu-
17 lations adopted under that statute, until correction of the deficien-
18 cy; or

19 (2) if the department finds, on three consecutive reviews,
20 that the nursing facility provided substandard quality of care; the
21 department shall deny payment under this paragraph for new admissions
22 until the facility has demonstrated to the satisfaction of the depart-
23 ment that it is in compliance with the medicaid requirements of 42
24 U.S.C. 1396r, and that it will remain in compliance with the require-
25 ments.

26 Sec. 18.20.330. APPEAL; HEARING. (a) Notwithstanding
27 AS 44.62.330 - 44.62.630, the department, by regulation, shall estab-
28 lish a hearing procedure by which a nursing facility may present
29 evidence to refute a deficiency found by the department, and by which

1 it may appeal a sanction imposed by order of the department under
2 AS 18.20.310. A request for a hearing must be made in writing within
3 10 days after service of the department's order on the nursing
4 facility. Except for an order that takes effect immediately under
5 AS 18.20.310(b)(1), a request under this subsection has the effect of
6 staying the department's order until the hearing is concluded and the
7 department makes a final determination.

8 (b) An appeal, or request for stay, regarding a sanction imposed
9 by the court under AS 18.20.310(6) or (7), 18.20.360, or 18.20.370,
10 must be filed with the court in accordance with the Rules of Civil
11 Procedure.

12 Sec. 18.20.340. CIVIL FINES. In accordance with regulations
13 adopted by the department under AS 44.62.010 - 44.62.300, the depart-
14 ment may assess and collect, with interest, a civil fine of up to
15 \$10,000 a day for each day a nursing facility is or was out of compli-
16 ance with any of the federal or state statutes or regulations listed
17 in AS 18.20.310. The department shall annually increase the maximum
18 amount of the civil fine authorized in this section by a percentage
19 equal to the percentage of increase in all items of the consumer price
20 index for all urban consumers for Anchorage, Alaska. Each day upon
21 which the same or a substantially similar noncompliance occurs is a
22 separate violation subject to the assessment of a separate civil fine.
23 A civil fine assessed under this section is not reimbursable under
24 AS 47.07.010 - 47.07.900 or AS 47.25.120 - 47.25.300. The department
25 shall deduct the amount of a civil fine from reimbursement due or to
26 be due the nursing facility under AS 47.07.010 - 47.07.900 or
27 AS 47.25.120 - 47.25.300. The department may also use any remedy
28 available under law to pursue collection of an unpaid fine.

29 Sec. 18.20.350. NURSING FACILITY RESIDENT SECURITY FUND. (a)

1 There is established in the department, as a fund separate from other
2 public money of the state, the nursing facility resident security
3 fund. This fund consists of all civil fines collected under
4 AS 18.20.310(a)(3) and 18.20.340 related to noncompliance with 42
5 U.S.C. 1396r(b), (c), or (d), and all interest earned on money in the
6 fund.

7 (b) The nursing facility resident security fund shall be admin-
8 istered by the department. Money in the fund may only be used for the
9 protection of the health or property of residents of nursing facil-
10 ities found to be out of compliance with 42 U.S.C. 1396r(b), (c), or
11 (d), or a regulation adopted under those statutes, including payment
12 for the costs of relocation of residents to other facilities, mainte-
13 nance of operation of a facility pending correction of deficiencies or
14 closure, and reimbursement to a resident for personal money lost.

15 Sec. 18.20.360. TEMPORARY MANAGEMENT. (a) If the department
16 determines that the health or safety of the residents of a nursing
17 facility is immediately jeopardized as the result of the nursing
18 facility's failure or refusal to comply with a state statute or regu-
19 lation, or failure or refusal to comply with the medicaid requirements
20 in 42 U.S.C. 1396r (Title XIX of the Social Security Act) or a regu-
21 lation adopted under that statute, the department shall immediately
22 petition the superior court for an order for appointment of temporary
23 administration to

24 (1) oversee the operation of the facility; and

25 (2) ensure the health and safety of the facility's resi-
26 dents while orderly closure of the facility occurs or the deficiencies
27 necessitating temporary administration are corrected.

28 (b) The court shall grant the petition if it finds by a pre-
29 ponderance of the evidence that the conditions in (a) of this section

1 exist.

2 Sec. 18.20.370. RECEIVERSHIP. (a) The department may petition
3 the superior court for establishment of a receivership for a nursing
4 facility if the department finds that one of the following conditions
5 exists and the current operator has demonstrated an inability or
6 unwillingness to take action necessary to immediately correct the
7 conditions alleged:

8 (1) the facility is operating without a license;

9 (2) the health, safety, or welfare of facility's residents
10 is immediately jeopardized;

11 (3) the facility demonstrates a pattern and practice of
12 violating state or federal statutes or regulations in such a way that
13 minimum resident care is jeopardized.

14 (b) The court shall grant the petition if it finds by a prepon-
15 derance of the evidence that one or more of the conditions in (a) of
16 this section exist and the current operator is unable or unwilling to
17 take action necessary to correct the condition.

18 Sec. 18.20.390. DEFINITIONS. In AS 18.20.300 - 18.20.390,
19 unless the context requires otherwise,

20 (1) "department" means the Department of Health and Social
21 Services;

22 (2) "general relief-medical" means the medical assistance
23 program authorized in AS 47.25.120 - 47.25.300;

24 (3) "nursing facility" means an institution, or a distinct
25 part of an institution, as defined in 42 U.S.C. 1396r;

26 (4) "medicaid" means the medical assistance program
27 authorized in AS 47.07.010 - 47.07.100.

28 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

29

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 16, 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 the quality of care in nursing facilities. The bill primarily contains provisions that implement federal requirements that are mandatory in order for Alaska's medicaid program to comply with the federal program, and for nursing facilities in the state to continue to receive medicaid funding. The Alaska medicaid program receives approximately 50 percent federal reimbursement. The total medicaid costs for nursing facilities in the state in FY 90 amount to over \$42,000,000.

Additionally, the bill will help to maintain the high quality of services generally provided in the nursing facilities in this state.

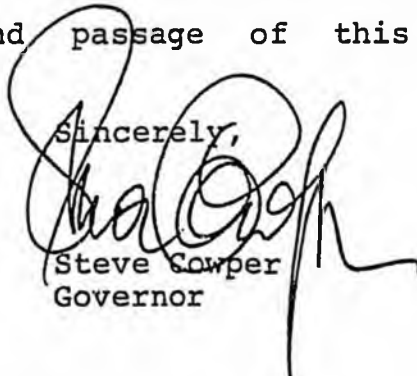
The bill allows the Department of Health and Social Services to impose sanctions against nursing facilities for substantially failing or refusing to comply with basic requirements of state licensing and certification laws for all nursing facilities, or with certification and other requirements for those facilities participating in the medicaid and general relief-medical programs. The sanctions include effects on state licensure and continued participation in the medicaid program. Also, the department could impose a ban on admissions of new patients in a nursing facility, or could assess a civil fine for each day of noncompliance with state or federal statutes or regulations. The bill would also authorize denial of payment for services rendered to medicaid and general relief-medical recipients, whose care is paid for in full or part by state money. The bill also authorizes the department to seek a court-appointed temporary administrator or a receiver to manage a nursing facility until residents

at risk can be removed from the facility or conditions improve at the facility. Finally, the bill authorizes the department to seek a court order to close a facility or transfer residents from the facility, or both, if a significant deficiency occurs affecting residents' health and safety.

The bill establishes a separate fund (the nursing facility resident security fund) into which certain civil fines, assessed by the department under this quality assurance program, will be deposited. Use of money in the fund is limited to the protection of the health or property of residents of nursing facilities found to be out of compliance with federal requirements. Article IX, sec. 7, of the Alaska Constitution prohibits the "dedication" of state revenue for a special purpose, but it provides an exception to this prohibition "when required by the federal government for state participation in federal programs." As a condition of participation in the federal medicaid program, 42 U.S.C. 1396r(h) requires that certain civil fines collected by the department be used only for certain protections of nursing facility residents. The nursing facility resident security fund established by the bill implements this federal requirement and, therefore, meets the criterion for an exception to the dedicated fund prohibition. Passage of this bill would allow the Department of Health and Social Services to comply with federal medicaid requirements, so that the state can continue to receive significant amounts of federal money. It also gives the Department of Health and Social Services an expanded list of sanctions to ensure that a high quality of nursing facility care continues to be offered in Alaska.

I urge your support and passage of this important legislation.

Sincerely,



Steve Cowper
Governor