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**418**

## 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						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**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)

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)

*Why would you want to  
close a facility.*

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

STEVE COWPER, GOVERNOR

**DEPT. OF HEALTH AND SOCIAL SERVICES**

P.O. BOX H  
JUNEAU, ALASKA 99811-0601  
PHONE: (907) 465-3030

**OFFICE OF THE COMMISSIONER**

April 5, 1990

APR 06 1990

The Honorable Paul Fischer  
Alaska State Senate  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Fischer:

HB 418 has recently been referred to the Senate HESS committee. This legislation makes changes in Alaska law which are required for continued State compliance with federal law. To not adopt these changes will put Alaska's Medicaid program in jeopardy of loss of federal funds.

HB 418 provides the Department with additional sanctions that can be used to bring nursing homes into compliance with health and safety requirements. Currently, the only remedy available to the State is decertification, which means that the facility will be ineligible for medicaid funds. This is a very serious sanction as nursing homes in this state are heavily dependent on state medicaid funds.

HB 418 contains additional sanctions which the state can impose on nursing homes for non-compliance with health and safety regulations. These sanctions offer the Department a range of responses which allow the department the opportunity to impose a sanction commensurate with the violation; thus eliminating the need to move toward decertification for every health and safety violation.

Although this legislation is required for continued federal participation in the Medicaid program, the Department also believes that HB 418 offers a positive change regarding the way in which the Department monitors the quality of nursing home care in Alaska.

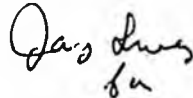
Senator Paul Fischer

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April 5, 1990

Therefore, I request that HB 418 be scheduled for a hearing in the Senate HESS committee as soon as possible. I know that the committee has many bills that have been referred to it and I appreciate your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Myra M. Munson".

Myra M. Munson  
Commissioner