

HB

187

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: April 26, 1999

FURTHER REFERRALS:

Date of Committee Action: 5/6/99

The FINANCE Committee considered:

HB 187

HOUSE BILL NO. 187

CERTIFICATES OF NEED FOR HEALTH FACILITY

"An Act relating to the certificate of need program for nursing care facilities and other facilities; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 187 (FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) DHSS 4/26/99

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Theriault			X	
<i>P. von Bunde</i>	Bunde				
<i>W. Kohnig</i>	Kohnig			X	
<i>William (Gustav)</i>	AUSTMAN			X	
<i>John G. Jones</i>	J. DAVIS	X			
<i>Ben Brumby</i>	GROSSMIDT			X	
<i>W. Carl E. Moses</i>	MOSES			X	
<i>Ann L. Jones</i>	A. DAVIS			X	
<i>W. H. Williams</i>	WILLIAMS			X	
<i>Tom</i>	TOM	X			

60 CHAIR'S SIGNATURE *Gene Theriault*

FISCAL NOTE

No: 1

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: HB 187
(H) Publish Date: 4/26/99

Revision Date: _____
Title: An Act relating to certificates of need for nursing home beds and providing an effective date
Sponsor: House HESS
Requestor: _____

Dept. Affected: Health and Social Services
BRU: Administrative Services
Component: Health Planning and Facilities Management
COMPONENT SERIAL NO. 2020
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY00	FY01	FY02	FY03	FY04	FY05
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	1.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	25.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.5	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS						
TOTAL OPERATING	26.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	13.3	0.0	0.0	0.0	0.0	0.0
1003 GF Match	13.3	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (please specify)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	26.5	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	none	none	none	none	none	none
PART-TIME	none	none	none	none	none	none
TEMPORARY	none	none	none	none	none	none

Estimate of any current year (FY99) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

Chapter 84, SLA 96 placed a moratorium on nursing home beds and established a Legislative Working Group on Long-Term Care. One recommendation of the Legislative Working Group was the importance of developing a State plan which outlines the desired long-term care system in a comprehensive manner. The Division of Senior Services already produces a comprehensive long-term care plan but it does not include nursing home beds. New standards for the approval of new nursing home beds need to be developed and a plan section written. Certificate of need applicants would be required to demonstrate how well their proposal fits into the standards and the plan to be approved. The fiscal note is for the cost of hiring a consultant, travel and supplies to research and develop new State nursing home review standards. Standards would take into consideration the existing and desired system, trends in care and nursing home use rates in Alaska; the effect of home health, assisted living and adult day care on the need for new nursing home beds; barriers to the development and use of home and community based services; gaps in services; and would develop a model that can be used to estimate the future need for nursing beds, and alternatives to institutional care such as assisted living. The standards would be used to review projects and develop a plan section that could be added as an appendix to the annual Division of Senior Services plan. This bill is a cost saving measure designed to avoid potential future costs to the state general fund of up to \$9.8 million annually due to construction of up to 234 new nursing home beds in the next 5 to 15 years.

Prepared by: Janet Clarke
Division: Administrative Services
Approved by Commissioner: Karen Ferdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-1630
Date: 04/15/99
Date: 4/16/99

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1-LS0708D ✓
Lauterbach
5/6/99

adopted NO 103j 5-6-99

CS FOR HOUSE BILL NO. 187(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): **HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**

A BILL

FOR AN ACT ENTITLED

1 "An Act removing a requirement that a certificate of need is needed before
2 elimination of a category of health services provided by a health care facility;
3 prohibiting a person from converting a building or part of a building to a
4 nursing home that requires licensure unless authorized by a certificate of need;
5 setting a standard of review for applications for certificates of need relating to
6 nursing homes and nursing home beds and relating to that standard of review;
7 providing that the standard of review for applications for certificates of need
8 for beds other than nursing home beds or for a health care facility other than
9 a nursing home is the availability and quality of existing health care resources
10 or the accessibility to those resources compared to the current or projected
11 requirement for health services required to maintain the good health of citizens
12 of this state; defining the term 'nursing home bed'; eliminating statutory

1 references to the office of planning and research in the Department of Health
2 and Social Services; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1. FINDINGS.** The legislature finds that

5 (1) ch. 84, SLA 1996, placed a two-year moratorium on the issuance or
6 modification of certificates of need under AS 18.07 for nursing beds and created a working
7 group to analyze issues relating to long-term care and the certificate of need program;

8 (2) it is anticipated that the long-term care system in Alaska will face a crisis
9 in its ability to provide services to a growing and increasingly aging population by the twenty-
10 first century unless the system can provide services in a more efficient and appropriate
11 manner;

12 (3) in 1996, the state spent \$120,000,000 in long-term care service for
13 approximately 5,000 Alaskans; approximately two-thirds of these expenditures, \$80,000,000,
14 were made from the state general fund;

15 (4) moderate assumptions about population and inflation would project that
16 more than \$545,000,000 will be needed to pay for long-term care services in Alaska by the
17 year 2015;

18 (5) a shift from the current significant reliance on costly institutional care to
19 a more balanced continuum of home-based and community-based services is needed;

20 (6) a two-year moratorium on the issuance or modification of a certificate of
21 need for the addition of nursing home beds was enacted into law in 1996 to

22 (A) encourage the development of home-based and community-based
23 services;

24 (B) direct the state's resources toward the services that can best meet
25 the needs of the clients; and

26 (C) facilitate actions to provide a more balanced system of care and
27 more appropriate placement of clients, enlarge client choice, and avoid unnecessary
28 new long-term care costs;

29 (7) appropriate planning is necessary to ensure that a certificate of need for
30 new or replacement nursing home beds is not approved without a

- 1 (A) demonstrated long-term need for those beds on a regional basis;
 2 (B) demonstration that the project is financially feasible and fosters the
 3 least reliance on the state general fund for provision of the most appropriate service;
 4 (C) demonstration of public participation in the planning process and
 5 support by affected groups; and
 6 (D) showing that the approval or modification of the certificate of need
 7 is consistent with existing state plans for delivery of care in Alaska; and

8 (8) this Act provides a minimum framework to ensure that the approval of new
 9 or replacement nursing home beds enhances access to the appropriate level of care to meet
 10 the needs of Alaskans and does not foster reliance on the state general fund to finance the
 11 operating and capital costs.

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

13 **Sec. 18.07.021. Administration** [OFFICE OF PLANNING AND
 14 RESEARCH]. The [OFFICE OF PLANNING AND RESEARCH IN THE]
 15 department shall administer the certificate of need program under this chapter and
 16 perform other functions prescribed in this chapter.

17 * Sec. 3. AS 18.07.031 is amended to read:

18 **Sec. 18.07.031. Certificate of need required.** (a) A person may not make
 19 an expenditure of \$1,000,000 or more for any of the following unless authorized under
 20 the terms of a certificate of need issued by the department [OFFICE]:

- 21 (1) construction of a health care facility;
 22 (2) alteration of the bed capacity of a health care facility; or
 23 (3) addition [OR ELIMINATION] of a category of health services
 24 provided by a health care facility.

25 (b) Notwithstanding the expenditure threshold in (a) of this section, a person
 26 may not convert a building or part of a building [THAT IS LICENSED AS AN
 27 ASSISTED LIVING FACILITY UNDER AS 47.33] to a nursing home that requires
 28 licensure under AS 18.20.020 unless authorized under the terms of a certificate of need
 29 issued by the department [OFFICE].

30 * Sec. 4. AS 18.07.041 is amended to read:

31 **Sec. 18.07.041. Standard of review for applications for certificates of need**

1 relating to non-nursing home beds and services. The department [OFFICE] shall
 2 grant a sponsor a certificate of need or modify a certificate of need that authorizes
 3 beds other than nursing home beds or that is for a health care facility other than
 4 a nursing home if the availability and quality of existing health care resources or the
 5 accessibility to those resources is less than the current or projected requirement for
 6 health services required to maintain the good health of citizens of this state.

7 * Sec. 5. AS 18.07 is amended by adding a new section to read:

8 **Sec. 18.07.043. Standard of review for applications for certificates of need**
 9 **relating to nursing homes and nursing home beds.** (a) The department shall
 10 develop review standards for an application for a certificate of need, or for a
 11 modification of a certificate of need, issued under this chapter for a health care facility
 12 that is a nursing home or has nursing home beds.

13 (b) In developing the review standards under (a) of this section, the department
 14 shall consider whether

15 (1) a public process and existing appropriate statewide, regional, and
 16 local plans were included in planning and designing the additional nursing home beds
 17 or the health care facility;

18 (2) the additional nursing home beds or the health care facility meets
 19 minimum required use rates for new nursing beds, and the effect on use rates for
 20 existing nursing home be

21 (3) the additional nursing home beds or the health care facility
 22 demonstrates consideration of the community, regional, and statewide needs for new
 23 nursing home beds;

24 (4) the additional nursing home beds or the health care facility meets
 25 the minimum number of new nursing beds that should be required in a facility to
 26 ensure efficiency and economies of scale;

27 (5) the additional nursing home beds or the health care facility
 28 demonstrates the proposed service will provide a quality of care equivalent to existing
 29 community regional, or statewide services;

30 (6) the additional nursing home beds or the health care facility
 31 demonstrates financial feasibility, including long-term viability, and what the financial

1 effect will be on consumers and the state; and

2 (7) the sponsor has demonstrated cost effectiveness through considering
3 the availability of appropriate, less costly alternatives of providing the services
4 planned.

5 (c) The department shall grant a sponsor a certificate of need or modify a
6 certificate of need that authorizes nursing home beds or that is for a health care facility
7 that is a nursing home if the department finds that the sponsor meets the standards
8 established in or under this chapter.

9 * Sec. 6. AS 18.07.061 is amended to read:

10 **Sec. 18.07.061. Modification and termination of activities.** The certificate
11 holder shall apply to the department [OFFICE] for a modification of the certificate
12 before terminating part of the activities authorized by the terms of issuance, but the
13 certificate holder is not required to obtain the acquiescence of the department
14 [OFFICE] before terminating all the activities authorized by the certificate. If a
15 certificate holder terminates all of the activities authorized by a certificate, the
16 certificate holder is required to notify the department [OFFICE] 60 days before
17 termination and to surrender the certificate to the department [OFFICE] within 30
18 days of termination.

19 * Sec. 7. AS 18.07.071 is amended to read:

20 **Sec. 18.07.071. Temporary and emergency certificates.** (a) The
21 department [OFFICE] shall grant a sponsor an emergency certificate for the
22 construction of a health care facility for which a certificate is required under
23 AS 18.07.031 if the sponsor shows, by affidavit or formal hearing, that the act of
24 construction consists of effecting emergency repairs.

25 (b) The department [OFFICE] may grant a sponsor a temporary certificate for
26 the temporary operation of a category of health service [,] if the sponsor shows by
27 affidavit or formal hearing

28 (1) the necessity for early, immediate, or temporary relief; [,] and

29 (2) adverse effect to the public interest by reason of delay occasioned
30 by compliance with the requirements of AS 18.07.041, 18.07.043, and application
31 procedures prescribed by regulations under this chapter.

1 (c) A temporary certificate granted under (b) of this section does not confer
2 vested rights on behalf of the applicant. The department [OFFICE] shall impose
3 those special limitations and restrictions concerning duration and right of extension that
4 the department [OFFICE] considers appropriate. A temporary certificate may not be
5 granted for a period longer than necessary for the sponsor to obtain review of the
6 action certified by the temporary certificate under AS 18.07.051. Application for a
7 certificate of need under AS 18.07.041 or 18.07.043 must commence within 60 days
8 of the date of issuance of the temporary certificate.

9 * Sec. 8. AS 18.07.081(a) is amended to read:

10 (a) The department [OFFICE], a member of the public who is substantially
11 affected by activities authorized by the certificate, or another applicant for a certificate
12 of need may initiate a hearing to obtain modification, suspension, or revocation of an
13 existing certificate of need by filing an accusation with the commissioner as prescribed
14 under AS 44.62.360. A revocation, modification, or suspension of an outstanding
15 certificate may not be undertaken unless it is in accordance with AS 44.62.330 -
16 44.62.630.

17 * Sec. 9. AS 18.07.081(c) is amended to read:

18 (c) A certificate of need shall be suspended if an accusation is filed before the
19 commencement of activities authorized under AS 18.07.041 or 18.07.043 that charges
20 that factors upon which the certificate of need was issued have changed [,] or new
21 factors have been discovered that significantly alter the need for the activity
22 authorized. A suspension of a certificate may not exceed 60 days. At the end of this
23 period or sooner, the department [OFFICE] shall revoke or reinstate the certificate.

24 * Sec. 10. AS 18.07.081(d) is amended to read:

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

26 (1) the sponsor has not shown continuing progress toward
27 commencement of the activities authorized under AS 18.07.041 or 18.07.043 after six
28 months of issuance;

29 (2) the applicant fails, without good cause, to complete activities
30 authorized by the certificate;

31 (3) the sponsor fails to comply with the provisions of this chapter or

1 regulations adopted under this chapter;

2 (4) the sponsor knowingly misrepresents a material fact in obtaining the
3 certificate;

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

6 (6) the sponsor fails to provide services authorized by the terms of the
7 certificate.

8 * **Sec. 11.** AS 18.07.101 is amended to read:

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

15 * **Sec. 12.** AS 18.07.111(2) is amended to read:

16 (2) "certificate" means a certificate of need issued by the department
17 [OFFICE] under AS 18.07.41, 18.07.043, or 18.07.071 [AS 18.07.071];

18 * **Sec. 13.** AS 18.07.111 is amended by adding a new paragraph to read:

19 (13) "nursing home bed" means a bed not used for acute care in which
20 nursing care and related medical services are provided over a period of 24 hours a day
21 to individuals admitted to the health care facility because of illness, disease, or
22 physical infirmity.

23 * **Sec. 14.** AS 18.07.111(11) is repealed.

24 * **Sec. 15. TRANSITION.** (a) A matter described in former AS 18.07.031 that is
25 authorized under a certificate of need issued before the effective date of this Act shall be
26 reviewed and completed in accordance with the applicable statutes and regulations as they
27 existed on the day before the effective date of this Act.

28 (b) Except as provided in (a) of this section, pending applications and any other
29 matters described in former AS 18.07.031 or in AS 18.07.031, as amended by this Act, shall
30 be reviewed and completed in accordance with the provisions of this Act.

31 * **Sec. 16.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

No: 1

STATE OF ALASKA
199 LEGISLATIVE SESSION

Bill Version: HB 187
(H) Publish Date: 4/26/99

Revision Date: _____
Title: An Act relating to certificates of need for nursing home beds and providing an effective date
Sponsor: House HESS
Requestor: _____

Dept. Affected: Health and Social Services
BRU: Administrative Services
Component: Health Planning and Facilities Management
COMPONENT SERIAL NO. 2020
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY00	FY01	FY02	FY03	FY04	FY05
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	1.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	25.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.5	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS						
TOTAL OPERATING	26.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	13.3	0.0	0.0	0.0	0.0	0.0
1003 GF Match	13.3	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (please specify)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	26.5	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	none	none	none	none	none	none
PART-TIME	none	none	none	none	none	none
TEMPORARY	none	none	none	none	none	none

Estimate of any current year (FY99) cost: \$0.0

ANALYSIS. (Attach a separate page if necessary)

Chapter 84, SLA 96 placed a moratorium on nursing home beds and established a Legislative Working Group on Long-Term Care. One recommendation of the Legislative Working Group was the importance of developing a State plan which outlines the desired long-term care system in a comprehensive manner. The Division of Senior Services already produces a comprehensive long-term care plan but it does not include nursing home beds. New standards for the approval of new nursing home beds need to be developed and a plan section written. Certificate of need applicants would be required to demonstrate how well their proposal fits into the standards and the plan to be approved. The fiscal note is for the cost of hiring a consultant, travel and supplies to research and develop new State nursing home review standards. Standards would take into consideration the existing and desired system, trends in care and nursing home use rates in Alaska; the effect of home health, assisted living and adult day care on the need for new nursing home beds; barriers to the development and use of home and community based services; gaps in services; and would develop a model that can be used to estimate the future need for nursing beds, and alternatives to institutional care such as assisted living. The standards would be used to review projects and develop a plan section that could be added as an appendix to the annual Division of Senior Services plan. This bill is a cost saving measure designed to avoid potential future costs to the state general fund of up to \$9.8 million annually due to construction of up to 234 new nursing home beds in the next 5 to 15 years.

Prepared by: Janet Clarke
Division: Administrative Services

Phone: 465-1630
Date: 04/15/99

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Date: 4/16/99

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AMENDMENT

Offered in the House Finance Committee

by Rep. Bunde

TO: HB 187

Page 3, line 3:

Delete "A"

Insert "Except as provided in (c) of this section, a [A]

Page 3, following line 14:

Insert a new bill section to read:

"*Sec 4. AS 18.07.031 is amended by adding a new subsection to read:

(c) A certificate of need is not required for the

(1) construction of a day surgery center or imaging center;

(2) alteration of the bed capacity of a health care facility if the alteration is necessary solely to accommodate the addition of day surgery or imaging services to the facility; or

(3) addition of day surgery or imaging services to a health care facility."

Renumber the following bill sections accordingly.

Page 7, line 3:

Delete "a new paragraph"

Insert "new paragraphs"

Page 7, following line 3:

Insert new paragraphs to read:

“(13) “day surgery” means surgery performed on a patient who arrives at the surgery facility on the day of surgery and is not expected to remain overnight at the facility after the surgery is performed;

(14) “imaging” means diagnostic testing, such as fluoroscopy or an x-ray, computerized axial tomography (CAT scan), bone scan, ultrasonography, scintigraphy, or magnetic resonance imaging (MRI), that produces a picture or conception with a likeness to an objective reality by providing clarity, contrast, and detail through the use of colored fluids, radionuclides, or other materials introduced to the human body; ionizing or nonionizing radiation; or an external magnetic field.”

Page 7, line 4:

Delete “(13)”

Insert “(15)”



3200 Providence Drive
P.O. Box 196604
Anchorage, Alaska
99519-6604

Tel 907.562.2211

Thursday, May 06, 1999

House Finance Committee members
Alaska State Legislature
Twenty-first Legislature -- First Session
Juneau, Alaska

Dear Representative Theriault,

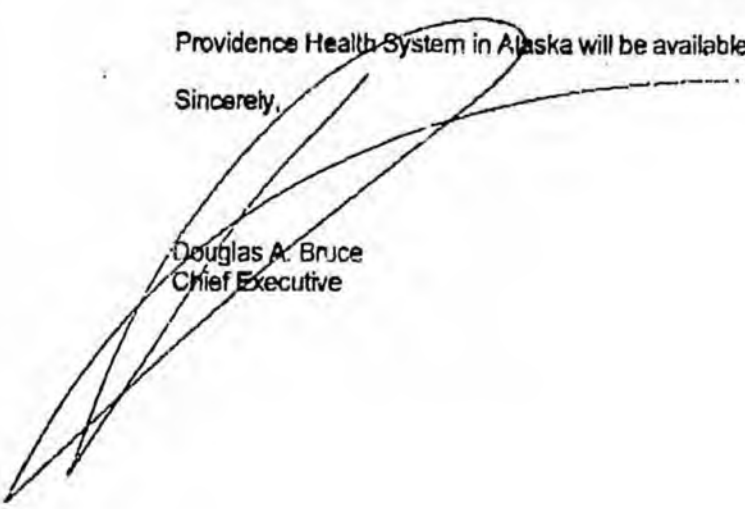
Providence Health System in Alaska supports the passage of HB 187. The work and recommendations of the Long term Care Task Force are contained in the revisions of HB 187, specifically relating to nursing homes.

We understand that an amendment was introduced that relates to acute care. This amendment suggests that day surgery and imaging services be exempted from the CON requirement of the Department. The primary purpose of CON laws has been to prove need to avoid unnecessary duplication and ultimately, cost to consumers, payers and the State. A public review of the need for services, through the CON process, assures a shared understanding of need and impacts to the community, providers and payers. Capricious changes to CON laws can have long term impact on the cost of care and services, so must be carefully considered. We are opposed to this amendment.

Over the past several months, we have been participating in discussions with the Department along with other members of ASHNA. The talks have been productive and healthy.

Providence Health System in Alaska will be available to testify via teleconference today at 1:30 p.m.

Sincerely,



Douglas A. Bruce
Chief Executive

**Greater
Fairbanks
Community
Hospital
Foundation, Inc.**

May 5, 1999

Interior Legislative Delegation
Alaska State Legislature
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Therriault,

*Owners of Fairbanks
Memorial Hospital
and Denali Center*

P.O. Box 71396
Fairbanks, AK 99707

(907) 458-5550
fax: (907) 458-5551

We understand discussion has arisen related to the relationship between the Greater Fairbanks Community Hospital Foundation, owners of Fairbanks Memorial Hospital and Denali Center (FMH/DC) and Lutheran Health Systems, who operate FMH/DC.

The Foundation has contracted on an annual basis with Lutheran Health Systems to operate FMH/DC for the last 30 years through a lease arrangement. This lease provides for a management fee consistent with industry standards. Over 95 percent of the revenues stay in the community. All revenues are used to fund depreciation, develop services needed in the community and to operate the facility.

Steve Stephens
President

David D. Ransley
1st Vice President

Ann Swift
2nd Vice President

Harry Porter
Treasurer

Joe Faulhaber
Secretary

Trustees:

Walter Carlo

Jeff Cook

William H. Doolittle, M.D.

Clarice Dulteminier, M.D.

Roger Floerchinger

Andrea Gelvin

Gail Hatran

John Hill

Mike Kelly

Helen Lazeration

William W. Mendenhall

Dave McNary

Ouida Paden

Richard Selfert

Margaret Soden

Charles Steiner, M.D.

Sandra Stringer

William G. Stroecker

David Swanson

Emeritus Members:

Julius A. Kornfeld

G.A. Al Seeliger

William R. Wood

Business Manager:

Karen Porter

It is our understanding that a discussion arose when HB 187, Certificate of Need (CON) for long-term care facilities was in the House HESS Committee. An amendment was offered to exempt day surgery and imaging services from current CON laws, which require Department of Health and Social Service approval of construction of medical facilities in excess of \$1 million. We would welcome the opportunity to discuss the advantages and disadvantages of the current CON law. However, it should not be in a piecemeal approach with little discussion of the entire issue. We strongly oppose that amendment.

The Foundation has demonstrated its stewardship to the community through reasonable pricing, quality health care and consistent management. Fairbanks enjoys a 15 to 20 percent price advantage over comparable Alaskan facilities.

The relationship between the Fairbanks community, the Hospital Foundation, and Lutheran Health Systems is indeed unique and is a tribute to 30 years of hard work and partnership. We appreciate the opportunity to comment on this relationship and to clarify what may have been misunderstandings regarding this relationship.

Sincerely,

Stewart C. Stephens

Stewart C. Stephens
President

Harry J. Porter

Harry J. Porter
Treasurer

cc: M. Powers

Alaska State Legislature



Official Business

State Capitol
Juneau AK
99801-1182

Long-Term Care Task Force

House Bill No. 187

An Act relating to the certificate of need program for nursing care facilities and other facilities; and providing for an effective date.

Alaska has had a Certificate of Need (CON) law since 1976. The purpose of this law is to insure the development of an accessible, cost-effective health care system with quality service. Currently the Department of Health and Social Services reviews all nursing home expansion projects that cost over \$1 million. However, the review of each request is limited to the factors of *accessibility* and *quality*, that is whether the service is currently available and can be provided in a quality manner.

Under this proposed legislation, a new standard of need is adopted for nursing home certificate of need requests. The revised standard allows decisions to be made based on additional criteria such as need, financial feasibility and availability of alternatives. Under this change, a new nursing home project will need to demonstrate the cost-effectiveness of each request and the appropriateness of the service.

The Department of Health and Social Services estimates that on average, ten new nursing home beds increase the Medicaid budget by about \$1 million annually. The decision to expand existing nursing home facilities has long-term implications to both the state treasury and our seniors and persons with disabilities. This legislation will give the Department of Health and Social Services the needed tools in which to make a more informed decision.

SENATE BILL 59/HOUSE BILL 187
CHANGE IN CERTIFICATE OF NEED LAW

- **Background:** Alaska has had a certificate of need law since 1976. The Original intent of the law was to ensure the development of an accessible, cost-effective health care system with quality services. It was designed to promote good planning by requiring applicants to justify the need and document how the project fits in with other health care facilities and initiatives. Local projects are assessed from a statewide, comprehensive, inclusive perspective rather than from a local individual community or facility perspective.
- **The Problem:** \$120 million was spent for long term care services to approximately 5,000 Alaskans in 1996, with approximately two thirds (\$80 million) coming from State General Fund expenditures. Conservative assumptions about population and inflation project costs for services at over \$215 million by the year 2015, moderate assumptions indicate a projection of \$545 million, and high projections indicate costs of \$ 1 billion in 2015. Unless there is a change in the way services are offered, there will be such a demand for long-term care services that many consumers could be denied needed services due to the cost.
- In order to meet the projected demand for services, a better mix of long-term care services needs to be promoted. Where appropriate, less costly home and community based long-term care services need to be expanded rather than construction of expensive new nursing home beds. Also, seniors have indicated they want to have a choice to stay at home as long as possible.
- **A Solution:** In 1996, a moratorium was passed on the construction of new nursing beds in order to allow time for the home and community based alternatives to grow. Since the moratorium, the number of individuals served in home and community based setting increased from an equivalent of 140 clients to 389 clients through Older Alaskan's waivers. Waiver clients must meet the same criteria for nursing home admission as nursing home residents. Senior utilization of nursing homes during that time dropped from an equivalent of 558 seniors to 492 seniors, a reduction of 23,360 patient days. On average, ten new nursing home beds will increase the Medicaid budget by about \$1 million annually
- Now that the moratorium has expired, there needs to be a mechanism to control long term care costs and encourage the growth of home and community based services. Changes in the certificate law will help control costs, promote planning, and create a better mix of services.
- Currently the Department of Health and Social Services reviews all nursing bed projects that cost over \$1 million. There is a loophole that allows a facility to add new nursing beds if they can be built for under \$1 million. Most conversions of beds from acute to long term care cost under \$1 million. Senate Bill 59 and House Bill 187 amend the certificate of need law to require all conversions of acute care or other beds to nursing beds to have a CON review.
- The certificate of need law also needs a new section added that allows broader review analysis for nursing homes and nursing home beds. Decisions are currently limited to accessibility and quality. This new section would allow decisions to be made based on additional standards such as need, financial feasibility, and availability of alternatives such as home and community based services.
- The list of criteria and standards would be changed to be more specific and better reflect the recommendations of the Legislative Working Group on Long-Term Care.

The Need for a Fiscal Note on SB 59/HB 187

David Pierce, Certificate of Need Coordinator, April 19, 1999

In order to implement SB 59/HB 187, the Department will have to develop review standards that will include the impact of home and community based services on reducing the need for new nursing home beds. The problem is quite similar to downsizing API. In that process, several studies were developed to determine how many beds would be needed and the effect that various community based services would have in reducing institutional bed need. In this case, we need to determine:

- Boundaries of the regional service areas based on patient origination data;
- Long-term care utilization by region (how many seniors need long-term care services);
- The senior population growth in these regions; and
- What percentage of the seniors could be served appropriately at home, in assisted living, or in another home or community based setting.

Currently, the nursing bed need methodology is flawed because it is based on historical utilization. The system is changing from primarily an inpatient system to an emphasis on home and community based services, and therefore, a new method of assessing need must be developed. The new method must take into account the number of persons who can be served at home or in assisted living facilities instead of in nursing homes. Development of new standards will require gathering utilization data on assisted living, home health, adult day care, hospice, residential home use, and other senior services to determine the impact these services have on keeping seniors out of nursing homes.

The Department has checked with several private firms and they confirm that the requested funds of \$26,500 are sufficient to develop a standard. A consultant must be hired to complete this task because the State does not currently have staff to complete the task. The only option for the State staff to complete this research would be to place a three month moratorium on all certificate of need applications to allow time to complete the research and develop the home and community based component of the standard for long-term care reviews.

The Urban institute states that "A study of the change in nursing home bed supply between 1981 and 1993 found that CON programs and moratoria on new construction significantly reduced the rate of increase in the number of nursing home beds." However, the same article states that "CON programs often do not have the technical rationale to find a lack of "need" for more nursing home beds..." and "CON programs are usually required to judge only need and to ignore state budgetary concerns."¹

¹ Wiener, Stevenson, & Goldenson. Controlling the Supply of Long-Term Care Providers at the State Level. The Urban Institute. Occasional Paper Number 22. December 1998. Page 3.



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MEMORANDUM

To: House and Senate Finance Committee Members

From: Rick Solie
Director of Community Relations & Planning
Fairbanks Memorial Hospital/Denali Center

Date: April 27, 1999

Subject: HB 187/ SB 59 - Certificate of Need for Long-Term Care Facilities
Opposition to an amendment related to imaging services and day surgery facilities

SB 59 and HB 187 are the result of the Long Term Care Task Force efforts to modify the Certificate of Need (CON) program governing the expansion of nursing homes. We support this legislation and appreciate the Legislature's attention to this important area of health care.

Recently, an amendment was offered to HB 187 in the House HESS Committee (which failed) that would exempt imaging services and day (ambulatory) surgery facilities from the current CON requirements of the Department of Health and Social Services. This exclusion is both unrelated to the Task Force recommendation and would create a piece-meal approach to modifying the CON laws. **We oppose this amendment.**

The Alaska State Hospital and Nursing Home Association (ASHNHA) has recognized the need for clarification of the CON laws to create a level playing field between health care providers. We are willing to work with the Legislature to develop some appropriate changes and have identified the need to do so in our 1999 work plan. However, this legislation is not the appropriate vehicle.

In Fairbanks, there are currently three applicants, including Fairbanks Memorial Hospital, who have requested a CON to provide ambulatory surgery facilities. The current process will require a Departmental review of the application(s), public hearings and a decision by the Commissioner. Approval of this exemption would circumvent the CON process currently underway in Fairbanks.

Quality and access are important elements of our health delivery system and we ask that you not consider this exclusion without a thorough examination of the issues related to ambulatory services and the state's role in oversight.

Thank you for your consideration.

cc: Interior Legislative Delegation
Commissioner Karen Perdue

Attachments: Amendment to HB 187

LTC **TASK FORCE**
Long-Term Care Task Force



FINAL REPORT
January 1999

Representative Con Bunde, Co-chairman
Senator Gary Wilken, Co-chairman

State Capitol Building
Juneau, Alaska 99801-1182

CERTIFICATE OF NEED

RECOMMENDATION

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The Task Force recommends that legislation be drafted and introduced to adopt the nursing home certificate of need recommendations developed by the *Legislative Working Group on Long-Term Care (1997)*.

“The certificate of need review process is required of any health facility planning to spend a million dollars or more for construction.”

Under AS 18.07, the Department of Health and Social Services administers the Certificate of Need Program. This program was created as a tool to control health care costs and prevent unnecessary or duplicative facilities or services. A certificate of need is required of any health facility planning to spend one million or more for construction, expansion or remodeling.

The certificate of need review is initiated when a health care facility submits a letter of intent to the Department of Health and Social Services. This letter of intent provides the project description, estimated cost, and starting and completion dates for the project. Based on the letter of intent, the department determines whether a detailed certificate of need application is needed. Once the application is received and declared complete, department staff analyzes the request and makes a recommendation to the Commissioner of Health and Social Services, who decides to approve or deny the application. The decision to grant or deny a certificate of need may be appealed.

In June 1996, HB 528 was signed into law (Chapter 84, SLA 96). This placed a two-year moratorium on the issuance of certificates of need or licenses for any new nursing home beds in Alaska effectively preventing any nursing home beds from being added until the moratorium expired. This two-year moratorium expired May 1, 1998. The law was passed due to concerns over the potential rapid growth of nursing home beds that became imminent as the result of the planned addition of 147 new nursing beds costing \$11 million annually. The moratorium allowed time to develop alternatives to nursing home beds and assess what could be done to promote cost containment.⁴⁶

The six-member working group established under HB 528 thoroughly analyzed the current procedure to grant certificates of need to long-term care health facilities and determined several weaknesses in existing law. As currently written, AS 18.07.041 requires the Department of Health and Social Services to grant a certificate of need if “the availability and quality of existing health care resources or the

accessibility to those resources is less than the current or projected requirement for health services to maintain the good health of citizens of this state." In other words, the Department must grant a certificate of need for new construction, expansion or remodeling of a nursing home facility if the service is not available or sufficiently accessible, and the applicant can demonstrate that the proposed service will be provided in a quality manner.

In its report the *Legislative Working Group* stated the following:

While availability, accessibility and quality are important, they are insufficient for assessing a current or projected requirement for health services. Meeting a current requirement does not mean that there is a long-term need for the service or facility or there will be the resources necessary to sustain the service or facility throughout its life cycle. Similarly, meeting a current or projected need does not mean that it is the most cost-effective method for doing so; nor does it mean that the State, facing declining resources, should encourage and support a low priority service in the face of more pressing priorities. The certificate of need program requires more explicit statutory and regulatory definition in these areas to better control costs and better target the health care priorities of Alaskans.⁴⁷

Currently there is a potential in Alaska for many new nursing beds to be built and, if built, these beds will cost the state a great deal. Using a medium growth projection, it is estimated that the senior population in Alaska will grow from 31,398 in 1997 to 80,927 by 2015.⁴⁸ In FY97, the Alaska Medicaid program spent \$43.8 million for 720 licensed nursing home beds. If the need for beds remains constant in the future, the number of beds could grow to 1,861 by 2015, a 250 percent growth at the annual cost to Medicaid of an additional \$109.5 million. "Proposed projects need to be compared against feasible alternatives to determine if the proposal is the most cost effective way of achieving comparable results."⁴⁹

Under the legislation proposed by the *Legislative Working Group on Long-Term Care*, new nursing home projects will need to demonstrate the cost-effectiveness of each request. Proposed projects will be compared against feasible alternatives to determine if the proposal is the most effective way to achieve comparable results. The Task Force recognizes that this issue needs more discussion and recommends that legislation be introduced for further consideration. (Please see Appendix B, page 69, for further detail. ❖

"The Legislative Working Group states that the certificate of need program requires more explicit statutory definition."

"Under the legislation, new nursing home projects will need to demonstrate cost effectiveness."



Alaska Commission on Aging

Resolution 99-5

In support of SB 59: An act relating to the certificate of need program for nursing care facilities and other facilities

Whereas Alaska's rapidly growing statewide senior citizen community is part of a national and international trend of increased longevity due to better nutrition, health care, and increased standards of living, and

Whereas the statewide community of older Alaskans age 65+ is projected to grow from 22,095 in 1990 to 80,927 by 2015, and

Whereas the availability of appropriate long-term care is vital to the well-being of disabled, chronically ill and frail Alaskans of all ages now, and in the future, and

Whereas developing the capacity to meet present and projected long-term care needs challenges us to plan strategically and allocate long-term care resources accordingly; and

Whereas SB 59 will amend Alaska's Certificate of Need Program to improve the State's ability to assure that future long-term care development is strategic, responsive to public need and preference, and cost-effective, and

Whereas the Legislative Long Term Task Force Report of January, 1999, recommended the introduction of this legislation in its Recommendation #21;

Now therefore the Alaska Commission on Aging strongly encourages the Twenty-First Alaska Legislature to pass SB 59.

Adopted this 9th day of March, 1999.

A handwritten signature in cursive script that reads "Alaire E. Stanton".

Alaire Stanton
Chair

Certificate of Need Requirements

State of Alaska

Issue:

The Certificate of Need process was established by the federal government to control spending/costs which potentially could deflate available health care dollars. The premise assumed health care costs would be controlled by eliminating duplicative and costly construction as well as multiplicity of equipment acquisition. In theory, the Certificate of Need process assumes extensive costs are passed on to the public.

Historical Prospective:

"The federal government's first major foray into health planning was the Hospital Survey and Construction Act (the Hill-Burton Act), passed in 1946, which distributed federal health care funds according to population and need (42 U.S.C. 291). In 1966, Congress enacted the Comprehensive Health Planning and Public Health Services Amendments, which provided funding for local and state health planning (42 U.S.C. 246). These acts were replaced in 1974 by the Planning Act (42 U.S.C. 300k-300t), which was repealed effective January 1, 1987 (Pub.L. 99-660, 701) but which nonetheless, continues to play a significant role in the various health planning programs administered by the states. The Social Security Act Amendments of 1972 contain health planning requirements that are still in effect (42 U.S.C. 1320). These Amendments establish a review process for capital reimbursement purposes (known as "Section 1122 review)...require that certain institutional Medicare providers engage in institutional health planning and budgeting (42 U.S.C. 1395)."

(HEALTH CARE LAW A Practical Guide, Macdonald, Michael, Meyer, Kathryn, Essig, Beth, Matthew Bender, NY)

Essentially, the federal legislation established the framework within which participating states must regulate health resources. The Certificate of Need is perhaps one of the most significant aspects of the health planning laws. Of interesting note regarding variances in state CON policies, Massachusetts dramatically limited the number of projects requiring CON review and raised its expenditure limit to seven million dollars and excluded many types of equipment purchases. A majority of other states have eliminated the CON process all together.

Points:

Contrary to the purpose of the limitations imposed by the CON, independent free-standing ambulatory surgery centers are specifically designed to reduce costly overhead and improve patient access to quality of care for specific surgical services.

The Certificate of Need requirement actually works opposite the intended purpose. Rather than reducing costs, it enhances the monopolistic powers of a singly empowered agency. Most with little incentive to control costs, certified providers (often sole hospital providers within rural communities) actually operate with impunity. To highlight the lessons learned by others, all but six states nationwide have eliminated the requirement to obtain a Certificate of Need.

Ironically, the costs of the CON review process both in dollars and in time, drive the expenses of facility development higher than the cost would be without the certification process. The funds expended in participating in the CON process would be best utilized in providing for the patients quality care in a comfortable, patient friendly center than debating the Need.

In the case of Fairbanks, the State found "need" for 2 additional OR suites within the Fairbanks Community in 1995. Due to strong opposition to the granting

of the CON to an independent physician, the sole provider of outpatient surgical services solicited approval citing utilization need and was granted an additional designated surgical suite. The result of this process left the monopolistic facility control structure intact.

The \$1,000,000.00 threshold that requires a Certificate of Need has long ago been overcome by inflation, technological advancements and regulatory agency requirements. The low threshold has placed an unreasonable restrictive barrier to developing a quality health care independent free standing surgical center without cumbersome and costly restrictions. In current times when minimal construction costs to meet state and federal regulatory mandates drives cost to exceed \$1,000,000.00 there are no options other than a costly application process to obtain a CON. That effort and money allocation should be more appropriately committed to funding the development of the facility, not to provide elaborate documentation to satisfy purely administrative requirements.

Advocates for retention of the CON process argue that competition will dramatically alter revenue flows. They contend that across the board expenses which Hospital Outpatient Surgery fees augment will no longer be available to hospitals benevolently providing care for the uninsured, altering the availability of uncompensated care. These proponents also argue that competition for market revenue will hinder their funding for advanced medical technology within the community. In reality, competition spurs efficiencies that would not be realized in a non competitive environment.

Today's healthcare consumers are economy minded...both patients and payors. Demand for and utilization of independent free standing surgical center facilities has increased dramatically due to spiraling costs of providing medical services as well as the patient's new attitude toward "choice" and satisfaction in healthcare. National forecasts predict this trend will continue to escalate. In a monopolistic healthcare environment, it is easy to become complacent and fail to

note the outward migration of patients to facilities offering "choice" outside of the rural communities or even the state.

The design of the Certificate of Need process is cumbersome and prohibitive to cost efficiencies, particularly in Interior Alaska. Timing elements of the CON generate artificial barriers due to short construction seasons which drive up the cost related the development and construction of an ambulatory center.

The CON further limits free enterprise and independence so valued by Alaskans by defining requirements which may apply differently under different sets of circumstances leading to extensive monies spent searching statutes or seeking exemptions. Many state legislatures, all but 6 US states, have recognized these problems and have chosen to drop the statutes or revise them dramatically to open the path to competition and meet the economic and personal needs of the patients.

The majority of healthcare services are becoming decentralized. Conceptually sole facility providers such as hospitals promote their position as "the Community Solution". The need to maintain high quality "excellence" in healthcare under severe economic pressure and regulatory mandates begs for alternative facilities and competition as the "Community Solution".

The State of Alaska needs to plan for the changes in the healthcare community and market and move forward with vision by identifying the opportunities which will focus on substantial cost savings to patients. The facility charge of an independent free-standing surgical center is "global"...all inclusive covering all facility services other than Anesthesia and physician professional fees. Without focus on a new strategy regarding the CON, the quality of healthcare in our communities will generally become stagnate.

The political issues associated with the CON including fears of loss revenue, market share mix change, etc. often lead to conflict and sabotage within the community as demonstrated historically throughout the nation.

“Surgical technology is continuing to advance with wider application of fiber optic and other advanced equipment suggesting in the future more care will be provided outside of the hospital to control efficiencies and cost issues. New modalities and less invasive procedures focus more on outpatient facilities rather than inpatient care.” The design of expanded facility operations for Ambulatory Surgery should not duplicate the design of the inpatient surgical suite which leads to a high degree of inefficiency and potentially higher risk exposure for the patient. Often this is the proposed plan from existing facilities.

(Ambulatory Care Management, 3rd Edition, Austin Ross, Stephen J. Williams, Ernest Pavlock, Delmar Publishers, Boston, 1998, p14.)

In 1995, the State of Alaska determined “Need” within the Fairbanks community for additional “outpatient surgery” and granted a CON for two additional OR suites to be constructed in Fairbanks at an Independent Free Standing Ambulatory Surgery Center site. Initially the sole franchise hospital argued against the “need”. However, revised its position and was awarded an additional suite as well. The outcome of this CON event enabled the sole provider to implement an additional surgical space but did not result in the implementation of an independent free standing outpatient surgical center which the sole provider still opposes. An independent free standing outpatient surgical center could and would be built this year but for the barrier of the state CON process.

The free standing ambulatory surgery center is not new to the healthcare environment. According to the Ambulatory Surgery Center Survey, (Federated Ambulatory Surgery Association, April 1997), 62% of ASCs have been in existence

since before 1991 and have remained economically sound even in highly competitive areas.

The federal government is continuing to support the development of ASC facilities and the shift to "outpatient surgery" by proposing the Ambulatory Surgery Centers now be recognized as health care suppliers rather than a provider. The Health Care Financing Administration also recommends the ASC must be separate and distinguishable from any entity or type of facility. (Legislative Update, Federated Ambulatory Surgery Association, Robert Wates, Esq.)

The monopolistic entity in control of outpatient services and surgery within a community often claims loss of revenue stream impacts its direct ability to cross subsidize other core services. Lutheran Health Systems recently announced the national acquisition of Samaritan Health Systems. According to the announcement published in Modern Healthcare magazine January 11, 1999 issue page 49, the new acquisition will create a new system which spans 32 hospitals, 14 states and projects an annual revenue of 1.6 billion dollars. Such a large entity does not need the monopoly afforded it by the CON process in Alaska.

According to Robert C. Williams, President-elect of the Federated Ambulatory Surgery Association, developers of Independent Free Standing Ambulatory Surgery Centers throughout the nation experience on going challenges from established hospital organizations, particularly those that are the sole provider in the community.

The arguments of fear of competition and decreased revenues and therefore the inability to provide needed charitable services "are the same that were heard in 1972 when the first out patient surgical center was developed in Arizona".

(American Academy of Orthopaedic Surgery, February 1999)

In many locations, the challenge of competition has resulted in hospitals or sole entities becoming more accountable, efficient, and leads to cost effectiveness thus saving healthcare dollars. Additional recent studies conducted by the Federated Ambulatory Surgery Association provide data to confirm more than 50% of all surgery is now performed and reimbursed on an outpatient "ambulatory" basis.

Conclusion:

Eliminating the CON for Ambulatory Surgical Centers within the state of Alaska represents progressive recognition of the handicap for cost effective healthcare delivery resulting from its existence and would allow greater patient access to out patient surgery. This would represent a savings to all providers. The potential of new facilities will further enhance the job market and attract highly skilled professionals into local markets. This global result is truly the "community solution" and a win - win position for all citizens of the State of Alaska.