

HB

187

A M E N D M E N T

PROPOSED BY: Rep. Rakeberg

OFFERED IN THE HOUSE

TO: HB 187

1 Page 3, line 3:

2 Delete "A"

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

4 Page 3, following line 14:

5 Insert a new bill section to read:

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

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

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

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

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

14 Renumber the following bill sections accordingly.

15 Page 7, line 3:

16 Delete "a new paragraph"

17 Insert "new paragraphs"

18 Page 7, following line 3:

19 Insert new paragraphs to read:

20 "(13) "day surgery" means surgery performed on a patient who arrives
21 at the surgery facility on the day of surgery and is not expected to remain overnight

1 at the facility after the surgery is performed;

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

8 Page 7, line 4:

9 Delete "(13)"

10 Insert "(15)"

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.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 187

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
 Agency: Department of Health & Social Services

Date: 4/16/99

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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.

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

April 16, 1999

APR 19 1999

Representatives Fred Dyson and John Coghill, Co-Chairs
House Health, Education and Social Services Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Representatives Dyson and Coghill:

The Alaska State Hospital and Nursing Home Association HB 186 and HB 187 with the following changes. These changes are the same as the ones incorporated into the Senate versions of these bills.

HB 186 Disclosure of inspection and investigations of certain health care facilities

The language regarding disclosure of information needs to be more explicitly written to indicate which reports are being disclosed and that the reports would become available upon completion of the final report.

Sec. 18.20.090. Disclosure of information. (a) The department shall make **statements of deficiencies** reports concerning **licensure** inspections and investigations of facilities or entities it licenses in this chapter, including [STATEMENTS OF DEFICIENCIES AND] approved plans of correction, available to the public within 14 calendar days after the **final report** [INFORMATION] is made available to the facilities or entities being reviewed.

The same changes would apply to the other sections on disclosure of information—home health, hospice and assisted living.

HB 187 Certificate of Need – Under the legislative findings section of the bill, insert "unnecessary" on page 2, line 26 after foster, so that it would read "foster unnecessary reliance on the state general fund..." It is our concern that at some time funding might be necessary and this language would preclude that. This change still leaves the discretion with the department.

Thank you for an opportunity to comment on this legislation.

Sincerely,



Linda Fink
Assistant Director

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 9, 1999

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/22/99

The HEALTH, EDUCATION AND SOCIAL SERVICES 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 [] 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)

[X] fiscal note(s) HSS [] fiscal note(s)

[] zero fiscal note(s) [] zero fiscal note(s)

Table with 5 columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. Contains handwritten signatures and checkmarks.

CHAIR'S SIGNATURE

Handwritten signatures of committee members.

Dear Representative:

I write to you in support of HB 187 and the amendment which removes the need for certificates of need for new construction of imaging centers and ambulatory surgery centers. Throughout the nation, the construction of imaging and ambulatory surgery centers independent of hospital medical centers has improved the quality of care, enhanced the availability and convenience of the service, and universally lowered the cost of care by an average of 30%. Many states have eliminated the certificate of need process all together recognizing that competition benefits the public in any market. Furthermore, the publication of national data that the certificate of need process significantly increases the cost of development and thereby drives up the cost of care makes it clear that certificates of need have outcomes contrary to the public good.

I am presently one member of a group of doctors who have applied for a certificate of need to build an ambulatory surgery center in Fairbanks. The Tannana Valley Clinic and the Fairbanks Memorial Hospital have each made separate application for a certificate of need for the same purpose. I want to be clear that I do have this interest in the outcome of the bill and its amendment. Any member or representative of those organizations has a similar vested interest. Our group is the clear front runner in the competition for this particular certificate of need by virtue of our training, timing, and unique experience in building and running ambulatory surgery centers. It would be to our advantage to be granted the certificate and for the competition to be eliminated. But we think the certificate of need process is not in the best interest of Alaska's communities and its people and we therefore favor HB 187 and its amendment.

It may be argued by existing medical centers that their high costs and profits are necessary to subsidize care for the indigent. In the case of not-for-profit hospitals such as ours, this is an empty argument. The federal government and, to a lesser extent, the state and borough governments subsidize the not-for-profit hospital generously and specifically on the condition that retained earnings will be utilized to support care for the indigent and to capitalize investments which improve the quality of care. There is no reason for insured individuals and their private and state employers to pay extra in facility fees to again subsidize these ends. It is double dipping if not triple dipping on the part of the not-for-profit hospital. Nevertheless, at the recent House HES committee hearing, Rick Solie, Director of Public Relations for the Fairbanks Memorial Hospital, admitted to Chairman Dyson that the thing the hospital fears most is competition. It is exactly that competition which would improve the quality of healthcare and decrease its costs in our single hospital town and in communities across Alaska, representing considerable savings for citizens and employers, not the least of which is the State itself. It may be that the advantages of competition decrease as division of market share makes for inefficient allocation and utilization of scarce resources in small markets, say towns of 5,000 or less in population. In that case, it may make sense to limit the provisions of HB187 to towns of 5,000 or more.

Thank you for your time and consideration. I would be please to speak with you personally should your schedule allow.

With warm best regards,

Cary S. Keller, MD FACSM
907-747-5861 through Friday 4:30
907-451-6561 subsequently