

CS FOR SENATE BILL NO. 26(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 2/18/22

Referred: Rules

Sponsor(s): SENATOR WILSON

A BILL

FOR AN ACT ENTITLED

1 "An Act repealing the certificate of need program for health care facilities; making
2 conforming amendments; and providing for an effective date."

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

4 * **Section 1.** AS 12.25.030(e) is amended to read:

5 (e) In this section, "health care facility" has the meaning given in
6 AS 12.55.155(c)(36) [AS 18.07.111].

7 * **Sec. 2.** AS 12.55.155(c)(36)(A) is repealed and reenacted to read:

8 (A) "health care facility" means a private, municipal, state, or
9 federal hospital, psychiatric hospital, independent diagnostic testing facility,
10 residential psychiatric treatment center, tuberculosis hospital, skilled nursing
11 facility, kidney disease treatment center (including freestanding hemodialysis
12 units), intermediate care facility, and ambulatory surgical facility; the term
13 excludes

14 (i) the Alaska Pioneers' Home and the Alaska Veterans'

1 Home administered by the Department of Health and Social Services
2 under AS 47.55; and

3 (ii) the offices of private physicians or dentists whether
4 in individual or group practice;

5 * **Sec. 3.** AS 12.55.155(c)(36) is amended by adding a new subparagraph to read:

6 (C) "residential psychiatric treatment center" has the meaning
7 given in AS 18.20.400(d).

8 * **Sec. 4.** AS 18.20.400(c) is amended to read:

9 (c) Subsection (a) of this section does not apply to

10 (1) a nurse who is employed by a health care facility providing
11 services for a school, school district, or other educational institution, when the nurse is
12 on duty for more than 14 consecutive hours during an occasional special event, such as
13 a field trip, that is sponsored by the employer;

14 (2) a nurse voluntarily working overtime on an aircraft in use for
15 medical transport, so long as the shift worked is allowable under regulations adopted
16 by the Board of Nursing based on accreditation standards adopted by the Commission
17 on Accreditation of Medical Transport Systems;

18 (3) a nurse on duty in overtime status

19 (A) who is participating in the performance of a medical
20 procedure or surgery that has begun but has not been completed;

21 (B) because of an unforeseen emergency situation that could
22 jeopardize patient safety; in this subparagraph, "unforeseen emergency
23 situation" means an unusual, unpredictable, or unforeseen situation caused by
24 an act of terrorism, disease outbreak, natural disaster, major disaster as defined
25 in 42 U.S.C. 5122, or disaster emergency under AS 26.23.020 or 26.23.140,
26 but does not include a situation in which a health care facility has reasonable
27 knowledge of increased patient volume or inadequate staffing because of some
28 other cause, if that cause is foreseeable;

29 (C) because the health care facility has a scheduling problem
30 caused by unforeseen weather conditions that prevent a second nurse from
31 arriving at the facility to relieve the nurse on duty; in this subparagraph,

1 "unforeseen weather conditions" means unusual, unpredictable, or unforeseen
 2 weather so extreme as to impair travel to the health care facility, but does not
 3 include a situation in which the health care facility has knowledge of the
 4 weather conditions far enough in advance to act so that a scheduling problem
 5 under this subparagraph can reasonably be avoided; or

6 (D) at a health care facility located in a rural community that
 7 declares a temporary nurse staffing emergency under AS 18.20.410;

8 (4) a nurse fulfilling on-call time that is agreed on by the nurse and a
 9 health care facility before it is scheduled unless fulfilling the on-call time would, in the
 10 nurse's judgment, create an unacceptable risk to the physical safety of the nurse, a
 11 patient, or an employee of the facility;

12 (5) a nurse voluntarily working overtime so long as the work is
 13 consistent with professional standards and safe patient care and does not exceed 14
 14 consecutive hours;

15 (6) a nurse voluntarily working beyond 80 hours in a 14-day period so
 16 long as the nurse does not work more than 14 consecutive hours without a 10-hour
 17 break and the work is consistent with professional standards and safe patient care;

18 (7) a nurse who

19 (A) is employed

20 (i) at a psychiatric treatment hospital that treats only
 21 children or at a residential psychiatric treatment center [, AS DEFINED
 22 UNDER AS 18.07.111,] that treats only children; in this sub-
 23 subparagraph, "children" means persons under 19 years of age who are
 24 receiving psychiatric treatment from a hospital or center or who are
 25 residing in a center and who were under 18 years of age on the date that
 26 the treatment or period of residence commenced;

27 (ii) at a residential psychiatric treatment center as
 28 defined in [UNDER] AS 47.32.900; or

29 (iii) at a secure residential psychiatric treatment center
 30 as defined in [UNDER] AS 47.12.990;

31 (B) voluntarily agrees to work a 16-hour shift for the period

1 between 5:00 p.m. on a Friday and 8:00 a.m. on the Monday that immediately
 2 follows and receives pay and benefits for that work that are equal to or greater
 3 than the pay and benefits the nurse would receive for working 20 regular hours
 4 in the same position; and

5 (C) during the period described in (B) of this paragraph does
 6 not work a 16-hour shift consecutive with another shift of eight hours or more
 7 without an intervening break of at least eight hours;

8 (8) the first two hours on overtime status when the health care facility
 9 is obtaining another nurse to work in place of the nurse in overtime status, so long as
 10 the nurse in overtime status is not on duty for more than 14 consecutive hours.

11 * **Sec. 5.** AS 18.20.400 is amended by adding a new subsection to read:

12 (d) In (c)(7)(A)(i) of this section, "residential psychiatric treatment center"
 13 means a secure or semi-secure psychiatric facility or inpatient program in a psychiatric
 14 facility that is licensed by the Department of Health and Social Services and that
 15 provides therapeutically appropriate and medically necessary diagnostic, evaluation,
 16 and treatment services

17 (1) 24 hours a day for children with severe emotional or behavioral
 18 disorders;

19 (2) under the direction of a physician; and

20 (3) under a professionally developed and supervised individual plan of
 21 care designed to achieve the recipient's discharge from inpatient status at the earliest
 22 possible time that is intensively and collaboratively delivered by an interdisciplinary
 23 team involving medical, mental health, educational, and social service components.

24 * **Sec. 6.** AS 18.20.499(2) is amended to read:

25 (2) "health care facility" means a private, municipal, or state hospital;
 26 independent diagnostic testing facility; primary care outpatient facility; skilled nursing
 27 facility; kidney disease treatment center, including freestanding hemodialysis units;
 28 intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or
 29 Alaska Veterans' Home administered by the Department of Health and Social Services
 30 under AS 47.55; correctional facility owned or administered by the state; private,
 31 municipal, or state facility employing one or more public health nurses; long-term care

1 facility; psychiatric hospital; residential psychiatric treatment center, as defined in
 2 AS 18.20.400(d) [AS 18.07.111] or AS 47.32.900; secure residential psychiatric
 3 treatment center as defined in [UNDER] AS 47.12.990; juvenile detention facility or
 4 juvenile treatment facility, as those terms are defined in AS 47.12.990; or treatment
 5 institution as that term is defined in AS 47.14.990;

6 * **Sec. 7.** AS 18.26.220 is amended to read:

7 **Sec. 18.26.220. Facility compliance with health and safety laws and**
 8 **licensing requirements.** A medical facility constructed, acquired, improved, financed,
 9 or otherwise under the provisions of this chapter and all actions of the authority are
 10 subject to [AS 18.07,] AS 47.32 [,] and any other present or future state licensing
 11 requirements for the facilities or services provided under this chapter. [A MEDICAL
 12 FACILITY ISSUED A CERTIFICATE OF NEED UNDER SEC. 4, CH. 275, SLA
 13 1976, BY VIRTUE OF BEING IN EXISTENCE OR UNDER CONSTRUCTION
 14 BEFORE JULY 1, 1976, MUST FULLY MEET THE REQUIREMENTS OF
 15 AS 18.07 IN ORDER TO BE ELIGIBLE FOR FUNDING UNDER THIS
 16 CHAPTER.]

17 * **Sec. 8.** AS 18.35.399(9) is amended to read:

18 (9) "health care facility" means an office or institution providing care
 19 or treatment for physical, mental, emotional, or other medical, dental, physiological, or
 20 psychological diseases or conditions; private, municipal, or state hospital; independent
 21 diagnostic testing facility; primary care outpatient facility; skilled nursing facility;
 22 kidney disease treatment center, including freestanding hemodialysis units;
 23 intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or
 24 Alaska Veterans' Home administered by the department under AS 47.55; long-term
 25 care facility; psychiatric hospital; residential psychiatric treatment center, as defined in
 26 AS 18.20.400(d) [AS 18.07.111] or AS 47.32.900; and other facilities, places of
 27 employment, or offices operated for use by doctors, nurses, surgeons, chiropractors,
 28 physical therapists, physicians, psychiatrists, or dentists or other professional health
 29 care providers to provide health care;

30 * **Sec. 9.** AS 18.07.021, 18.07.031, 18.07.035, 18.07.041, 18.07.043, 18.07.045, 18.07.051,
 31 18.07.061, 18.07.071, 18.07.081, 18.07.091, 18.07.101, 18.07.111; AS 21.86.030(c)(1);

1 AS 44.64.030(a)(18); and AS 47.80.140(b) are repealed.

2 * **Sec. 10.** Section 4, ch. 275, SLA 1976, is repealed.

3 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 CERTIFICATES OF NEED; APPLICABILITY. (a) The Department of Health and
6 Social Services may not take action on or after the effective date of secs. 1 - 11 of this Act to
7 revoke, enforce, or modify a certificate of need issued to a health care facility before the
8 effective date of secs. 1 - 11 of this Act, unless the certificate of need is for an expenditure
9 that exceeds

10 (1) \$5,000,000, as of July 1, 2024;

11 (2) \$7,500,000, as of July 1, 2026;

12 (3) \$10,000,000, as of July 1, 2028; or

13 (4) \$15,000,000, as of July 1, 2030;

14 (b) On and after July 1, 2031, the Department of Health and Social Services may not
15 take action to revoke, enforce, or modify a certificate of need issued to a health care facility
16 before the effective date of secs. 1 - 11 of this Act.

17 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 TRANSITION: REGULATIONS. The Department of Health and Social Services shall
20 adopt regulations necessary to implement the changes made by this Act by July 1, 2023. The
21 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
22 effective date of secs. 1 - 11 of this Act.

23 * **Sec. 13.** Section 12 of this Act takes effect immediately under AS 01.10.070(c).

24 * **Sec. 14.** Except as provided in sec. 13 of this Act, this Act takes effect July 1, 2024.