

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES



Regulations

## **7 AAC 07 CERTIFICATE OF NEED**



**Effective  
August 11, 2010**

## Chapter 07 - Certificate of Need

### 7 AAC 07.001 Health care facilities considered

(a) The department will only consider an application for certificate of need from a health care facility if the health care facility meets each of the following standards:

(1) the facility is a health care facility as defined in [AS 18.07.111](#) ;

(2) the facility

(A) would be required to obtain a license after completion of the construction or to operate the facility under AS 47.32; or

(B) is an independent diagnostic testing facility or a kidney disease treatment center, including a freestanding hemodialysis unit;

(3) the facility is located or providing services in the state.

(b) To evaluate whether a health care facility is an office of private physicians or dentists to be excluded as a health care facility under [AS 18.07.111](#) , the department will consider that the office qualifies for the exclusion only if

(1) the business and all business assets are 100 percent owned by one or more physicians licensed under [AS 08.64](#) or one or more dentists licensed under AS 08.36;

(2) the office is not otherwise a health care facility;

(3) the business provides assessment, diagnosis, and treatment to patients on a ongoing basis; and

(4) the business holds a valid business license under AS 43.70.

**History: Eff. 8/11/2010, Register 195**

**Authority: [AS 18.07.031](#) [AS 18.07.101](#)**

### 7 AAC 07.010 Expenditures to be included when determining whether a certificate of need is required

(a) In determining the amount of an expenditure for an activity under [AS 18.07.031](#) (a), a person shall include the cost for one, or a combination of two or more, of the following components, as applicable:

(1) site excavation;

(2) construction, demolition, or remodeling of a building;

(3) other site or facility development;

(4) purchase of equipment, a building, or other property;

(5) purchase of land that is to be used for the health care facility; the value of land purchased for future development of the facility will be considered at the time the future development is to occur, if the

(A) future development requires a certificate of need; and

(B) value of the land was not included in a previous certificate of need issued under this chapter for the facility;

(6) the value of land that is owned by the applicant and that is to be used for the health care facility, based on the value of the land at acquisition or the current appraised value of the land after deducting the cost of the appraisal, whichever value is less; the provisions of this paragraph do not apply

(A) to an expenditure that involves only remodeling of an existing facility unless the remodeling includes an expansion of the facility; or

(B) if the value of the land was included in a previous certificate of need issued under this chapter for the facility;

(7) the value of space that is owned by the applicant and that is to be used for the health care facility, based on the value of the square footage of the space if it were leased, using the average current market rate for similar space leased in the proposed service area or comparable space in a comparable service area; the provisions of this paragraph do not apply to an expenditure that involves only remodeling of an existing facility unless the remodeling includes an expansion of the facility;

(8) leasing of equipment or space occupied by the facility, based on

(A) the net present value of the lease; for purposes of this subparagraph, "net present value" means the total lease payments over the useful life of the asset, less the existing age of the asset, as set out in the 2008 edition of *Estimated Useful Lives of Depreciable Hospital Assets*, published by the American Hospital Association and adopted by reference;

(B) the total cost of any leasehold improvements; and

(C) the total cost of any fixtures or equipment purchased or leased without regard to depreciation;

(9) undertakings essential to a component listed in this subsection; those items include

(A) studies, surveys, designs, plans, working drawings, site acquisitions and preparation, financing costs, research, training, and consultant costs; and

(B) for purchase of equipment, the cost of shipping and installation in addition to undertakings listed in (A) of this paragraph;

(10) donations in kind or transfers to a health care facility, including land, buildings, equipment, furnishings, and fixtures, which if acquired directly by the facility would be included as an expenditure, valued at the fair market value of the asset at the time of its donation or transfer.

(b) For an expansion of an existing facility, only the value of the land that will be used for the expansion will be considered an expenditure.

(c) For purposes of determining whether AS 18.07.031 (a) and this section apply to a specific activity, the expenditure of more than one person for the same activity will be considered the expenditure of the person conducting the activity.

(d) Repealed 8/11/2010.

(e) For the purposes of determining whether AS 18.07.031 (a) applies to a specific activity, the department will exclude an expenditure for a nonclinical purpose if

(1) the sponsor of the activity is an enrolled Medicaid provider, and that expenditure is not included in the Medicaid prospective payment rate methodology under 7 AAC 150; and

(2) the applicant submits information to the department that explains to the satisfaction of the department

(A) the purpose of the expenditure;

(B) how the expenditure is for a nonclinical purpose only; and

(C) the total project cost for all expenditures for nonclinical purposes.

(f) The acquisition of land previously excluded as an expenditure for a nonclinical purpose under this section is not an excluded expenditure for the purposes of determining whether AS 18.07.031 (a) applies to a specific activity if the facility seeks to develop that land for an activity subject to a certificate of need under AS 18.07.

(g) In (a)(6) of this section, the department will consider land to be used for the health care facility as land occupied by the building where the health care facility is located, and land or space used in support of the facility. The department will include outbuildings related to maintenance and other facility operations, recreation areas, and parking areas as part of the land.

(h) In this section,

(1) "excavation" means the digging out or removal of materials;

(2) "expenditure for a nonclinical purpose"

(A) means an expenditure for an item that is not directly related to the provision of clinical services;

(B) includes an expenditure for a parking lot, garage, information and communication system, physician and administrative office space, acquisition of land for a nonclinical purpose, and the acquisition and replacement of nonmedical equipment;

(3) "fixture"

(A) means an article that is permanently resting on, permanently affixed to, or permanently attached by cement, plaster, nails, bolts, screws, or other means to a building;

(B) includes cabinets, counters, sprinkler systems, window air conditioning units, furnaces, boilers, movable heating units, lighting fixtures, burglar alarms, battery-operated fire alarms, plumbing fixtures and fittings, awnings, venetian blinds, lockers, walk-in refrigeration units, signs, vault doors and equipment, and elevators;

(4) "nonmedical equipment" includes boilers, heating or cooling systems, and ventilation systems;

(5) "remodeling"

(A) means altering the structure or furnishings of a building;

(B) does not include routine maintenance or routine replacement of equipment.

**History:** Eff. 10/26/77, Register 64; am 8/13/80, Register 75; am 8/8/90, Register 115; am 12/5/90, Register 116; am 5/19/91, Register 118; am 8/14/2005, Register 175; am 8/11/2010, Register 195

**Authority:** [AS 18.07.031](#) [AS 18.07.101](#)

**Editor's note:** A copy of the *Estimated Useful Lives of Depreciable Hospital Assets*, adopted by reference in 7 AAC [07.010](#), may be examined at the department's certificate of need program at 350 Main Street, Juneau, Alaska, or may be purchased from the American Hospital Association, 155 N. Wacker Drive, Chicago, Illinois 60606; telephone (312) 422-3000; Internet address: <http://www.aha.org>.

**7 AAC 07.012 Independent diagnostic and testing facilities**

Repealed.

**History:** Eff. 1/11/2006, Register 177; repealed 8/11/2010, Register 195

**7 AAC 07.015. Divided or phased activity; purchase of land**

Repealed.

**History:** Eff. 8/14/2005, Register 175; repealed 8/11/2010, Register 195

**7 AAC 07.020. Emergency and temporary certificates of need**

Repealed.

**History:** Eff. 10/26/77, Register 64; am 8/13/80, Register 75; repealed 8/14/2005, Register 175

**7 AAC 07.025 Standards and methodologies; waiver of standards**

(a) Before forwarding a certificate of need application to the commissioner for a decision under 7 AAC 07.070, the department will review the application and supporting documents to determine if the certificate of need application

(1) meets the applicable requirements of AS 18.07;

(2) complies with the requirements of this chapter; and

(3) meets the certificate of need review standards and uses the methodologies identified in the department's document entitled *Alaska Certificate of Need Review Standards and Methodologies*, dated December 9, 2005, and adopted by reference.

(b) An applicant may request that a review standard adopted by reference under (a)(3) of this section be waived. The department will recommend to the commissioner that a review standard be waived if the applicant documents to the department's satisfaction that

(1) meeting the standard would cause a reduction in the availability, quality, or accessibility of services to the consumer in the service area;

(2) the standard does not apply to the activity being considered; or

(3) the standard does not apply to the service area.

(c) The department will not waive a methodology adopted by reference under (a)(3) of this section.

(d) The department will consider a divided or phased activity to be a single activity for the purposes of AS 18.07 if

(1) two or more components of the activity were financed together and are to be constructed or acquired together;

(2) one component of the activity is dependent upon completion of another component of the activity and neither component, if completed alone, would meet the objectives of the certificate of need applications; or

(3) constructed activities are built at the same time or in a continuing manner, with no more than 120 days between completion of one activity and commencement of the next.

(e) In determining whether an activity is divided or phased, the department will not consider the value of any portion of the land that is purchased for a future activity if that land is not associated with a specific current activity.

**History:** Eff. 8/14/2005, Register 175; am 1/11/2006, Register 177; am 8/11/2010, Register 195

**Authority:** AS 18.07.031 AS 18.07.035 AS 18.07.041 AS 18.07.043 AS 18.07.101

**Editor's note:** A copy of the document entitled *Alaska Certificate of Need Review Standards and Methodologies*, adopted by reference in 7 AAC 07.025, may be obtained at the department's certificate of need program at 350 Main Street, Juneau, Alaska 99801, or at the following Internet site: [http://www.hss.state.ak.us/dhcs/healthplanning/cert\\_of\\_need/](http://www.hss.state.ak.us/dhcs/healthplanning/cert_of_need/).

#### **7 AAC 07.030 Letter of intent**

Repealed.

**History:** Eff. 10/26/77, Register 64; am 8/13/80, Register 75; repealed 8/14/2005, Register 175

#### **7 AAC 07.031 Request for determination of whether a certificate of need is required**

(a) A person who is considering whether to undertake an activity involving the construction or alteration of a health care facility or the addition of a category of health care services provided by a health care facility may submit to the department a written request for a determination as to whether the requirements of AS 18.07 and this chapter are applicable to the activity proposed, including whether

(1) the total cost for an expenditure for an activity listed in AS 18.07.031 (a)(1) - (3) will meet or exceed the expenditure threshold set in AS 18.07.031 ;

(2) the activity constitutes a conversion to a nursing home under AS 18.07.031 (b);

(3) the expenditure would be considered a cost associated with

(A) routine maintenance; or

(B) routine replacement of equipment; or

(4) the facility involved in the activity is a health care facility.

(b) A request for determination must contain

(1) a clear, complete, and current description of the proposed activity, including a description of each component of the activity proposed to be undertaken;

(2) a certified estimate of the total cost of each proposed component of the activity listed in 7 AAC , as applicable, for the entire activity; and

(3) an estimated starting date and completion date for the proposed activity.

(c) If the department requires additional information to make its determination, the department will send a written request for the additional information to the requester. The requester must provide the additional information requested by the department no later than 30 days after the date of the request or the department will terminate the request submitted under (a) of this section.

(d) The department will send its determination to the requester

(1) no later than 20 days after the date that the department received the request; or

(2) if additional information is requested under (c) of this section, no later than 20 days after the date that the department received the additional information.

(e) If the department determines that the proposed activity is subject to AS 18.07 and this chapter, the department will send a written notice of determination to the requester that

(1) a certificate of need application must be submitted and approved before the proposed activity may begin; and

(2) the requester may seek reconsideration under 7 AAC 07.033 of the department's determination.

(f) If the department determines that a certificate of need is not required, the requester may proceed with the proposed activity. If that person subsequently finds that the cost of the activity will meet or exceed the expenditure threshold set by [AS 18.07.031](#) , or that the activity or facility is otherwise subject to [AS 18.07](#) and this chapter, the person must submit an application under 7 AAC [07.040](#) to proceed.

**History:** Eff. 8/14/2005, Register 175; am 8/11/2010, Register 195

**Authority:** [AS 18.07.031](#) [AS 18.07.101](#)

### **7 AAC 07.032 Public notice of decision on request for determination of whether a certificate of need is required**

The department will publish notice of its determination under 7 AAC [07.031](#) in at least one newspaper of general circulation in the state and on the Alaska Online Public Notice System established under [AS 44.62.175](#) . In the notice, the department will

(1) describe the proposed activity, including the name of the person who submitted the request, and the proposed service area; if the department has determined that a certificate of need is not required, the department will also include the estimated cost of the activity; and

(2) state whether the department has determined that the proposed activity

(A) cannot proceed unless a certificate of need is issued for the activity under [AS 18.07](#) and this chapter, and that the department will begin its review of the application for a certificate of need after the application is received; or

(B) does not require a certificate of need.

**History:** Eff. 8/14/2005, Register 175

**Authority:** [AS 18.07.031](#) [AS 18.07.101](#)

### **7 AAC 07.033 Request for reconsideration**

(a) A person who requested a determination under 7 AAC [07.031](#) may seek reconsideration of the determination by submitting a written request for reconsideration to the department. A request for reconsideration must

(1) be postmarked no later than 30 days after the date of the written notice of determination issued under 7 AAC [07.031](#);

(2) be signed by the person seeking reconsideration, or an authorized representative;

(3) contain a description of the determination for which reconsideration is sought; and

(4) identify, with supporting information, each reason for disagreeing with the department's determination.

(b) The commissioner will issue a written decision on a request for reconsideration no later than 30 days after the date the department receives the request. The commissioner will base a decision on a request for reconsideration upon

(1) the information provided in the request for reconsideration;

(2) the records of the department; and

(3) other available and relevant information.

(c) If the commissioner changes the department's original determination, the department will issue a revised written determination.

(d) A decision under this section constitutes the final administrative decision of the department.

**History: Eff. 8/14/2005, Register 175; am 8/11/2010, Register 195**

**Authority:** [AS 18.07.031](#) [AS 18.07.101](#)

#### **7 AAC 07.035 Pre-application conference**

Before an applicant for a certificate of need submits an application, the department will, if requested by the applicant, or on its own initiative, schedule a pre-application conference to provide guidance and technical assistance regarding the application process. The department will not assist in preparing or completing an application, but may, if necessary information is available, provide that information to assist the applicant in preparing an application

**History: Eff. 8/14/2005, Register 175; am 8/11/2010, Register 195**

**Authority:** [AS 18.07.031](#) [AS 18.07.101](#)

#### **7 AAC 07.040 Submission of application**

(a) To apply for a certificate of need, a person must

(1) submit all of the information required by the department's *Certificate of Need Application Packet*, dated December 9, 2005, and adopted by reference;

(2) submit the application fee determined under 7 AAC [07.079](#);

(3) agree in writing to participate in the uniform statewide reporting system required under [AS 18.07.101](#) when requested under 7 AAC [07.105\(c\)](#) ; and

(4) state whether the certificate of need is intended to initiate a change in bed capacity in the service area covered by the proposed certificate of need.

(b) An applicant may submit a written request to permanently withdraw the application at any time during the application review process.

(c) At the request of an applicant to modify or reevaluate an application, the department may determine that an application that was previously complete is now incomplete and suspend the application review process for up to one year. Following a granted suspension, the department has a new 60-day period under [AS 18.07.045](#) to defer review or to submit an analysis and recommendation to the commissioner.

**History:** Eff. 10/26/77, Register 64; am 8/13/80, Register 75; am 8/14/2005, Register 175; am 1/11/2006, Register 177; am 8/11/2010, Register 195

**Authority:** [AS 18.07.031](#) [AS 18.07.035](#) [AS 18.07.045](#) [AS 18.07.101](#)

### **7 AAC 07.042 Public notice of receipt of application**

(a) When the department receives an application for a certificate of need under 7 AAC [07.040](#), the department will publish notice in at least one newspaper of general circulation in the state and on the Alaska Online Public Notice System established under [AS 44.62.175](#) . In the notice, the department will

(1) describe the proposed activity, including the applicant's name and the proposed service area;

(2) state that any person planning to submit an application for a similar activity in the same proposed service area must submit a

(A) letter of intent that must be received by the department no later than 4:30 p.m. on a date set in the notice that is at least 25 days after the date of the publication of the notice, so that the department may prepare to conduct a concurrent review of all applications; the letter of intent must include

(i) a clear, complete, and current description of the proposed activity, including a description of each component of the activity proposed to be undertaken;

(ii) a certified estimate of the total cost of each proposed component of the activity listed in 7 AAC [07.010\(a\)](#) , as applicable, for the entire project; and

(iii) an estimated starting date and completion date for the proposed activity; and

(B) complete application for a certificate of need no later than 60 days after the department decides that the initial application for a similar service is complete;

(3) include the department's mailing address, street address, electronic mail address, and facsimile number for purposes of submitting a letter of intent described in (2) of this subsection; and

(4) state that after the department has conducted a review for completeness under 7 AAC [07.050](#), the department will publish notice of that decision that includes opportunity for public comment and notifies the public where a copy of each application may be reviewed.

(b) A person who desires to participate in a concurrent review for a certificate of need must submit an application to the department no later than 60 days after the department receives the letter of intent submitted under (a) of this section. To submit a concurrent application for a certificate of need, a person must

(1) submit all of the information required by the department's *Certificate of Need Application Packet*, adopted by reference in 7 AAC [07.040](#);

(2) submit the application fee determined under 7 AAC [07.079](#); and

(3) agree in writing to participate in the uniform statewide reporting system required under [AS 18.07.101](#) when requested under 7 AAC [07.105\(d\)](#).

**History:** Eff. 8/14/2005, Register 175; am 8/11/2010, Register 195

**Authority:** [AS 18.07.031](#) [AS 18.07.035](#) [AS 18.07.101](#)

### **7 AAC 07.050 Review for completeness**

(a) The department will review each certificate of need application received under this chapter to determine if it is complete.

(b) No later than 30 days after the department receives an application, the department will notify the applicant in writing that the application has been accepted as complete or will request additional information under (c) of this section as necessary for the department to complete its review.

(c) If the department requests additional information under (b) of this section, the applicant shall submit the information no later than 60 days after receiving the request. The department will review any additional information submitted under this subsection no later than 20 days after the information is received and will notify the applicant that the application is complete or that the department requires additional information to complete its review.

(d) If an applicant fails to submit, no later than 60 days after receiving the request, additional information requested under (b) or (c) of this section, the department will deny the application. An applicant whose application is denied for untimely submission of additional information may submit a new application for review under this section.

**History:** Eff. 10/26/77, Register 64; am 8/13/80, Register 75; am 8/14/2005, Register 175; am 8/11/2010, Register 195

**Authority:** [AS 18.07.035](#) [AS 18.07.045](#) [AS 18.07.101](#)

### **7 AAC 07.052 Public notice of complete application**

(a) If the department accepts one or more applications as complete, the department will publish notice of that decision under (b) of this section in at least one newspaper of general circulation in the state, and on the Alaska Online Public Notice System established under [AS 44.62.175](#) . The department will send a written notice by electronic mail, or, if the recipient has informed the department that it prefers to receive notice by mail or facsimile transmission, then the department will send notice by the chosen option, to each health care facility located in the proposed service area, to each person who has requested notification, and to each person that the department believes is interested in the application.

(b) In a notice published under this section, the department will

(1) describe the activity proposed in each application, including the applicant's name, and advise where copies of the application are available for review;

(2) advise that the department has accepted each application as complete;

(3) identify which application is the originating application and which applications are concurrent applications;

(4) if more than one application has been accepted for a similar activity in the same service area, advise that the department will conduct a comparative review;

(5) include the proposed schedule for the review;

(6) include the date, time, and place of a public meeting; a meeting under this paragraph

(A) will be held no less than 15 and no more than 30 days after the date of the publication of the notice; and

(B) may be conducted by teleconference;

(7) state that any person may submit written comments to the department regarding each proposed activity, and that the department will consider those comments if they are received no later than 30 days after the date of the publication of the notice; and

(8) state that any person may request notification of the commissioner's decision on each application under 7 AAC [07.070\(f\)](#) .

**History:** Eff. 8/14/2005, Register 175; am 1/11/2006, Register 177; am 8/11/2010, Register 195

**Authority:** [AS 18.07.101](#)

#### **7 AAC 07.060 Certificate of need application review process; comparative review**

(a) The department will review each complete application using the standards of [AS 18.07.041](#) or 18.07.043 and the standards and methodologies adopted by reference in 7 AAC [07.025](#). When the department's review is completed, the department will submit its analysis and recommendation to the commissioner within the time standards allowed under [AS 18.07.045](#) , including any

(1) deferment under [AS 18.07.045](#) (a)(1); or

(2) extension granted under [AS 18.07.045](#) (b).

(b) The date of publication of the notice under 7 AAC [07.052](#) is the first day of the review period.

(c) If a comparative review is conducted, the department will issue a single analysis and single recommendation to the commissioner regarding all applications in the comparative group. If the department determines each applicant is equally capable of providing the health services in a manner that meets the purposes of this chapter, the department will give preference to the originating application.

**History:** Eff. 10/26/77, Register 64; am 8/13/80, Register 75; am 8/14/2005, Register 175; am 8/11/2010, Register 195

**Authority:** [AS 18.07.031](#) [AS 18.07.041](#) [AS 18.07.043](#) [AS 18.07.045](#) [AS 18.07.101](#)

#### **7 AAC 07.065 Expedited review**

Repealed.

**History:** Eff. 8/13/80, Register 75; repealed 8/14/2005, Register 175

#### **7 AAC 07.067 Contact with department prohibited during application review**

(a) An applicant, any person acting on the applicant's behalf, any holder of a certificate of need, or any person opposed to or in favor of the proposed activity, may not contact the department, including the commissioner, regarding the substantive matters of an originating application or any competing application

(1) after the close of public comment under 7 AAC [07.052](#); and

(2) before the written decision of the commissioner is released under 7 AAC [07.070](#).

(b) Nothing in this section precludes the department from contacting the applicant or other persons or entities if necessary to obtain clarification, data, or expert information. Any contact under this subsection will be documented in the department's records related to the application and will be available for public review.

**History:** Eff. 8/14/2005, Register 175; am 8/11/2010, Register 195

**Authority:** [AS 18.07.031](#) [AS 18.07.101](#)

### **7 AAC 07.070 Decision by commissioner**

(a) The decision of the commissioner to grant or deny a certificate of need will be made in writing in accordance with (c) of this section. In that decision, the commissioner will state, as applicable, the

- (1) maximum expenditure that may be obligated for the proposed activity;
- (2) bed capacity;
- (3) approved capacity of other services that are expanded or added; and
- (4) completion date for the proposed activity.

(b) The commissioner will consider the following in making a decision to grant or deny a certificate of need:

- (1) the department's records, including the application under consideration;
- (2) the department's analysis and recommendations submitted under 7 AAC [07.060](#);
- (3) written public comments received before the deadline set in the notice published under 7 AAC [07.052](#);
- (4) comments received at the public meeting held under 7 AAC [07.052](#);
- (5) the applicable provisions of [AS 18.07](#), [AS 18.20.150](#), this chapter, 7 AAC [12](#), and 7 AAC [105](#) - 7 AAC [160](#);
- (6) relevant health planning documents on file with the department;
- (7) any other special or extraordinary circumstances related to

(A) community access to health care, including the provision of a continuum of care in close proximity to family and community; or

(B) the feasibility of the proposed activity;

(8) whether, based on the department's analysis and recommendations, conditions should be added to the certificate of need, including specifying a minimum period during which an activity described in the certificate must be available in the proposed service area.

(c) The commissioner's decision under this section will be made in writing within 45 days after the commissioner receives the department's analysis and recommendations under 7 AAC 07.010, unless the commissioner

(1) requires additional information from the

(A) department staff who prepared the analysis and recommendations;

(B) department staff or other persons with expertise regarding the proposed activity; or

(C) applicant; or

(2) finds that further analysis is required by the department before a final decision can be made.

(d) If the commissioner's decision is inconsistent with the analysis and recommendations submitted under 7 AAC 07.060, the commissioner will include a written statement of the reasons for the decision.

(e) The department will mail a copy of the commissioner's findings and decision to each applicant and will advise each applicant of the right to appeal the decision under 7 AAC 07.080.

(f) The department will

(1) provide a copy of the decision and findings to any person who requests a copy;

(2) publish notice of the commissioner's decision under 7 AAC 07.072; and

(3) send a copy of the notice by electronic mail, or, if the recipient has informed the department that it prefers to receive notice by mail or facsimile transmission, then the department will send notice by the chosen option, to each health care facility located in the proposed service area, to each person who has requested notification, and to each person that the department believes is interested in the decision.

(g) In a certificate of need granted and issued under this section, the commissioner will include

(1) the certificate holder's name;

(2) a description of the service to be provided;

(3) any conditions of approval that are considered necessary under (b)(8) of this section;

(4) the approved total cost of the project, if applicable; and

(5) the approved completion date.

(h) A certificate of need is valid only for the time specified in the original certificate or any time extension allowed under 7 AAC [07.095](#). Rights granted under a certificate of need do not continue after the activity authorized by the certificate of need is completed.

(i) Approval of a certificate of need does not imply any guarantee of federal, state, or private money, including Medicaid payments or grant awards, and does not imply any guarantee of profitability.

**History:** Eff. 10/26/77, Register 64; am 8/13/80, Register 75; am 8/14/2005, Register 175; am 1/11/2006, Register 177; am 8/11/2010, Register 195

**Authority:** [AS 18.07.031](#) [AS 18.07.041](#) [AS 18.07.043](#) [AS 18.07.045](#) [AS 18.07.051](#)

[AS 18.07.101](#)

#### **7 AAC 07.072 Public notice of commissioner's decision**

After the commissioner makes a decision under 7 AAC [07.070](#), the department will publish notice of that decision in at least one newspaper of general circulation in the state and on the Alaska Online Public Notice System established under [AS 44.62.175](#) . In the notice, the commissioner will describe the proposed activity as authorized by the certificate of need, briefly summarize the commissioner's decision, include information about how to obtain a copy of the decision, and state that an appeal under 7 AAC [07.080](#) or an administrative hearing under 7 AAC [07.082](#) may be filed or initiated no later than 30 days after the date of publication of the notice under this section.

**History:** Eff. 8/14/2005, Register 175; am 8/11/2010, Register 195

**Authority:** [AS 18.07.101](#)

#### **7 AAC 07.079 Application fee**

An applicant for a certificate of need must include with the application a nonrefundable application fee as follows:

(1) for an activity valued at \$2,500,000 or less, \$2,500;

(2) for an activity valued at more than \$2,500,000, a fee equal to .1 percent of the estimated cost, up to a maximum fee of \$75,000.

**History:** Eff. 8/14/2005, Register 175

**Authority:** [AS 18.07.035](#) [AS 18.07.101](#)

**7 AAC 07.080 Hearing on denial of an application for a certificate of need**

(a) An applicant for a certificate of need whose application was denied in whole or in part by the commissioner may appeal that decision by requesting a hearing under this section. A request for a hearing must

(1) be filed no later than 30 days after the date of publication of the notice under 7 AAC [07.072](#); and

(2) clearly state, in writing, the basis for the hearing.

(b) No later than 30 days after the department receives a written request for a hearing, the commissioner will refer the matter to a hearing officer.

(c) A hearing under this section must be based solely upon the record that existed at the time of the department's decision.

(d) At the hearing the applicant may

(1) call or cross-examine witnesses;

(2) present expert testimony to refute the department's decision, including the department's calculation of need;

(3) present additional evidence that was not part of the agency record if that evidence

(A) was available to the department during the application and decision process, but was not properly considered; or

(B) was unknown to the applicant or the department at the time of the decision, but is available at the time a request for hearing is made under this section.

(e) After consideration of all evidence and testimony, the hearing officer shall submit to the commissioner a recommended decision. The commissioner will adopt, reject, remand to the hearing officer, or modify the decision.

(f) Parties to a hearing conducted under this section are limited to

(1) the department;

(2) the applicant who requested a hearing; and

(3) if there was a concurrent review, the applicants who were included in the concurrent review.

(g) A hearing under this section will be conducted in accordance with [AS 44.64.010](#) - 44.64.200.

**History: Eff. 10/26/77, Register 64; am 8/13/80, Register 75; am 6/3/88, Register 106; am 8/14/2005, Register 175; am 8/11/2010, Register 195**

**Authority:** [AS 18.07.081](#) [AS 18.07.101](#)

**7 AAC 07.082 Hearing for modification, suspension, or revocation of an existing certificate of need**

(a) The department, a member of the public who is substantially affected by activities authorized by a certificate of need, or another applicant for a certificate of need may initiate an administrative hearing under this section for purposes of seeking review on a modification, suspension, or revocation of an existing certificate of need, by filing an accusation in accordance with (b) - (d) of this section. The accusation must be filed with the department no later than 30 days of the date of publication of the notice under 7 AAC [07.072](#) if the accusation is seeking a review of a decision made under 7 AAC [07.070](#).

(b) A hearing to seek modification of an existing certificate of need must conform to the requirements of [AS 18.07.081](#) (b) and [AS 44.62.360](#) .

(c) A hearing to request a suspension of an existing certificate of need must conform to the requirements of [AS 18.07.081](#) (c) and [AS 44.62.360](#) .

(d) A hearing to request a revocation of an existing certificate of need must conform to the requirements of [AS 18.07.081](#) (d) and [AS 44.62.360](#) .

(e) The department may intervene as a right as a party in an administrative hearing concerning an accusation filed under (a) of this section by a member of the public who is substantially affected by activities authorized by a certificate of need or by another applicant for a certificate of need. If the department does not exercise its right to intervene, the department's role is limited to issuing a decision on the accusation, and the department is not a party.

(f) A hearing under this section will be conducted in accordance with [AS 44.62.330](#) - 44.62.640.

(g) The commissioner may consolidate hearings granted under this section.

**History: Eff. 8/11/2010, Register 195**

**Authority:** [AS 18.07.031](#) [AS 18.07.101](#)

## **7 AAC 07.090 Term of certificate of need**

Repealed 8/13/80.

## **7 AAC 07.092 Change of ownership or facility location**

If a health care facility is sold, leased, discontinued, or moved to a new location during the department's review of an application for a certificate of need, or before completion of an activity for which a certificate of need has been issued, the applicant shall notify the department in writing within 20 working days after the sale, lease, discontinuance, or move, and shall include complete information regarding the action that has occurred. Notification under this section does not require submittal of a new certificate of need application.

**History:** Eff. 8/14/2005, Register 175

**Authority:** [AS 18.07.031](#) [AS 18.07.101](#)

## **7 AAC 07.095 Modification of a certificate of need**

(a) A certificate of need may not be modified after a proposed activity has been completed or after the completion date on the most current certificate of need has passed.

(b) If the holder of a certificate of need is making continuing progress toward completion of the activity authorized by a certificate of need, the holder may submit a request to the department for up to a two-year extension of the completion date specified in the certificate. The holder shall submit a written request to the department that describes the need for an extension and specifies the new completion date. The department will issue a modified certificate of need with the new completion date if the holder is making continuing progress toward completion of the activity. An extension described in this subsection may be made only once. To make an additional change in the completion date, the holder must submit a request for modification under (c) of this section.

(c) Except as provided in (b) of this section for a one-time change in the completion date, the holder of the certificate of need must submit a written request for a modification of the certificate if

(1) the scope of an activity changes or is expected to change; an activity changes in scope if one or more purpose or goal of a proposed activity has been added or eliminated; a redesign of a project and an expansion or addition of a purpose or goal is not considered a change in scope if the main elements of the proposed activity are intact and cost remains the same or is reduced;

(2) an additional change in the completion date beyond that allowed under (b) of this section is needed;

(3) a design change is required that will affect anticipated operating costs by \$250,000 or more; or

(4) an increase occurs or is expected to occur in the cost of the proposed activity by more than 15 percent above the approved maximum expenditure.

(d) A request under (c) of this section must be made on a form supplied by the department and must

(1) contain a detailed description of each proposed change to the certificate, including a statement of the reasons why the modification is needed;

(2) state the estimated increase in cost, if any, related to the modification; and

(3) include a current progress report, on a form supplied by the department.

(e) The department will review a request submitted under (d) of this section and will notify the requestor in writing that the change described in the request for modification

(1) does not require a modification to the certificate of need;

(2) is minimal, requiring the department to conduct only a minimal level of review; a change will be considered minimal if it does not change the services to be provided or the purpose of the proposed activity and

(A) reduces the cost of the proposed activity; or

(B) any increase in cost is not more than 15 percent above the approved maximum expenditure; or

(3) warrants a full review that requires submittal of a new certificate of need application.

(f) If the department's review under (e) of this section indicates that the change is minimal, the department will conduct a limited review of the change and issue a recommendation. After considering the recommendation of the department, the commissioner will issue a decision.

(g) If the department's review under (e) of this section indicates that the change warrants a full review that requires submittal of a new certificate of need application, the holder shall submit the completed application packet adopted by reference in 7 AAC [07.040](#), and shall pay an application fee determined under 7 AAC [07.079](#).

(h) The department will publish, in accordance with 7 AAC [07.032](#), notice of a decision under (e) of this section.

(i) During the department's review of a new application submitted under (g) of this section, the holder is limited to the scope of work authorized by the original certificate of need until the modified certificate of need is issued.

**History:** Eff. 8/13/80, Register 75; am 8/14/2005, Register 175; am 8/11/2010, Register 195

**Authority:** [AS 18.07.031](#) [AS 18.07.035](#) [AS 18.07.061](#) [AS 18.07.081](#) [AS 18.07.101](#)

#### **7 AAC 07.100 Transfer of certificate of need prohibited**

Repealed.

**History:** Eff. 10/26/77, Register 64; am 8/13/80, Register 75; repealed 8/14/2005, Register 175

#### **7 AAC 07.105 Periodic reports**

(a) Regardless of whether the facility is making an expenditure that requires a certificate of need, a health care facility, as defined in [AS 18.07.111](#) , shall complete and submit to the department an annual expenditure and data report on a form provided by the department.

(b) A person who is issued a certificate of need shall provide the department with written reports on the development of the activity until the activity is completed or terminated. The person shall submit a report required under this subsection on or before January 1 and July 1 each year. If the first submittal date occurs less than six months after the certificate of need or determination was issued, the first report is due on the following submittal date.

(c) The department will prepare and publish an annual report on the status of requests under 7 AAC [07.031](#), letters of intent, applications, and reviews under this chapter. In the annual report, the department will include a general statement of the findings and decisions for each completed review.

(d) For purposes of the uniform statewide system of reporting required under [AS 18.07.101](#) , the department will include in the annual report published under (c) of this section a summary of available health care services. Each health care facility shall provide the department with that information when requested, using a form supplied by the department.

**History:** Eff. 8/13/80, Register 75; 8/14/2005, Register 175; am 8/11/2010, Register 195

**Authority:** [AS 18.07.101](#)

#### **7 AAC 07.107 Inspections for compliance with certificate of need**

The department may conduct an inspection to determine that an activity subject to a certificate of need is being, or has been, developed as authorized in the certificate. The certificate holder shall allow the department, after proper identification, access to the premises during regular business hours to investigate, inspect, examine, evaluate, or analyze facilities, records, and operations related to the activity authorized in the certificate of need.

**History:** Eff. 8/14/2005, Register 175

**Authority:** [AS 18.07.031](#) [AS 18.07.101](#)

#### **7 AAC 07.109 Dates**

Wherever this chapter identifies a date in which a letter, application, document, request for a hearing, or accusation must be submitted and that date falls on a weekend or a state or federal holiday, that date is extended to the next business day recognized by the state.

**History:** Eff. 8/11/2010, Register 195

**Authority:** [AS 18.07.031](#) [AS 18.07.101](#)

#### **7 AAC 07.110 Notice**

Repealed 8/13/80.

#### **7 AAC 07.120 Abbreviated review**

Repealed 8/13/80.

#### **7 AAC 07.130 Definitions**

Repealed.

**History:** Eff. 10/26/77, Register 64; am 8/13/80, Register 75; am 8/8/90, Register 115; am 12/5/90, Register 116; am 5/19/91, Register 118; repealed 8/14/2005, Register 175

#### **7 AAC 07.900 Definitions**

In this chapter, unless the context indicates otherwise,

(1) "activity" means the

(A) construction of a health care facility;

(B) alteration of the bed capacity of a health care facility;

(C) addition of a category of health services provided by a health care facility; or

(D) conversion of a building or part of a building to a nursing home that requires licensure under AS 47.32;

(2) "acute care hospital" has the meaning given "hospital" in [AS 47.32.900](#) ;

(3) "ambulatory surgical center" has the meaning given in [AS 47.32.900](#) ;

(4) "applicant" means a person who has submitted an originating application or a competing application;

(5) "certificate of need" has the meaning given "certificate" in [AS 18.07.111](#) ;

(6) "certified estimate" means an estimate developed by a professional architect or engineer licensed under [AS 08.48](#), or by an individual who is qualified to estimate the cost of health care facility equipment, demolition, and construction;

(7) "change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health care facility;

(8) "commissioner" means the commissioner of health and social services;

(9) "concurrent application" means a certificate of need application submitted to the department in which the applicant is proposing to provide a similar activity, including a change in bed capacity, in the same service area for which an originating application has already been submitted;

(10) "construction" has the meaning given in [AS 18.07.111](#) ;

(11) "critical access hospital" means a facility that is a hospital licensed in the state that satisfies the criteria set out in 42 U.S.C. 1395i-4(c)(2)(B) and meets the conditions of participation set out in 42 C.F.R. 485.601 - 485.647;

(12) "day" means calendar day;

(13) "demolition" means the tearing down, razing, destroying, or taking apart of an existing structure;

(14) "department" means the Department of Health and Social Services;

(15) "diagnostic testing" means an evaluation performed to aid in the diagnosis or detection of disease, to measure the progress or recovery from disease, or to confirm the absence of disease;

(16) "equipment"

(A) means an installed device or system of devices necessary for the safe, functional, and medically appropriate operation of the facility, including medical equipment, utilities, generators, boilers, furnaces, heating systems, sprinkler systems, air conditioning systems, ventilation systems, security systems, walk-in refrigeration units, vaults, and other elevators;

(B) does not include optional design features, furnishings, or decor choices that do not add to the minimum necessary for the safe, functional, and medically appropriate operation of the facility;

(17) "expenditure" has the meaning given in [AS 18.07.031](#) ;

(18) "furnishings" means furniture, wall covering, or floor covering;

(19) "health care facility"

(A) has the meaning given in [AS 18.07.111](#) ;

(B) includes, whether owned or operated by a private person, the state, or a local government of the state,

(i) an acute care hospital;

(ii) an ambulatory surgical center as defined in [AS 47.32.900](#) ;

(iii) a critical access hospital;

(iv) an independent diagnostic testing facility;

(v) an intermediate care facility;

(vi) an intermediate care facility for the mentally retarded;

(vii) a kidney dialysis center;

(viii) a nursing facility;

(ix) a psychiatric hospital;

(x) a residential psychiatric treatment center;

(20) "holder" means the person to whom a certificate of need has been issued;

(21) "hospital" has the meaning given in [AS 47.32.900](#) ;

(22) "independent" means a separately identifiable facility that is administratively and financially distinct from a health care facility licensed under AS 47.32;

(23) "independent diagnostic testing facility" means an outpatient facility, fixed or mobile, that is

(A) designed and equipped solely to perform diagnostic testing using major diagnostic testing equipment for an independent diagnostic purpose; and

(B) administratively and financially distinct from a health care facility or an office of private physicians or dentists;

(24) "intermediate care facility" means a nursing home that is not a skilled nursing facility;

(25) "intermediate care facility for the mentally retarded" means a facility, or a distinct part of a facility, licensed under [AS 47.32](#), that is primarily for the diagnosis, treatment, or rehabilitation of the mentally retarded or persons with related conditions;

(26) "kidney dialysis center"

(A) means a treatment center;

(B) includes a free-standing hemodialysis unit that is devoted to the treatment of kidney disease;

(27) "member of the public who is substantially affected" means

(A) an applicant for a certificate of need, including an applicant whose application was reviewed comparatively with the application in question;

(B) a person who

(i) resides and regularly uses a health care facility within the geographic area served or to be served by the health care services that would be provided under the certificate of need; and

(ii) testified at a public hearing held or who submitted written comments on the application in question;

(C) a health care facility

(i) that is located in the geographic area where the health care services would be provided under the certificate of need; and

(ii) who testified at a public hearing held or who submitted written comments on the application in question; or

(D) a third-party payor that

(i) reimburses a health care facility for services in the service area where the health care services would be provided under the certificate of need; and

(ii) testified at a public hearing held or submitted written comments on the application in question;

(28) "nursing facility"

(A) has the meaning given in [AS 18.20.390](#) ;

(B) includes a skilled nursing facility and an intermediate care facility;

(29) "originating application" means a new certificate of need application submitted to the department proposing to provide an activity in a service area for which on the date of submittal there is no other pending certificate of need application;

(30) "person" includes

(A) the entities specified in [AS 01.10.060](#) (8);

(B) a health maintenance organization;

(C) a foundation;

(D) a trust;

(E) an estate;

(F) a political subdivision or instrumentality of the state, including a municipal corporation;  
and

(G) any other legal entity recognized by the state;

(31) "psychiatric hospital" means a hospital or part of a hospital that is primarily for the diagnosis and treatment of mental, emotional, and behavioral disorders;

(32) "residential psychiatric treatment center" has the meaning given in [AS 18.07.111](#) ;

(33) "routine maintenance"

(A) means

(i) the regular, customary, ordinary, or usual upkeep of property and equipment to keep the property or equipment in safe working condition or in good repair;

(ii) maintenance that is required to meet life and safety code standards under 13 AAC [50](#);  
or

(iii) the remodeling of space that is fully depreciated and for which the services provided have not changed;

(B) does not include

(i) a repair or service if the repair or service substantially adds to the technological capability or capacity of property or equipment; or

(ii) any part of a project that adds square footage to the total size of the facility;

(34) "routine replacement of equipment"

(A) means the regular, customary, ordinary, or usual replacement of worn out, broken, or obsolete equipment;

(B) does not include replacement of medical equipment that increases the technological capacity of the equipment or facility so long as the increase does not result in a change in the scope of services that are being provided;

(35) "skilled nursing facility" means a nursing facility as defined in 42 U.S.C. 1395i-3(a);

(36) "service area" means the geographic area to be served by the proposed activity, including the community where the proposed activity will be located.

**History: Eff. 8/14/2005, Register 175; am 8/11/2010, Register 195**

**Authority: [AS 18.07.031](#) [AS 18.07.101](#) [AS 18.07.111](#)**