



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of
Health and Social Services

CERTIFICATE OF NEED PROGRAM

3601 C Street, Suite 978
Anchorage, Alaska 99503
Main: 907.334.2471
Fax: 907.334.2220

May 8, 2014

John McCormick, M.D.
Cable & McCormick, a Professional Corporation
d/b/a Diagnostic Imaging of Alaska
4100 Lake Otis Pkwy, Ste 304
Anchorage, AK 99508

RE: Request for Determination dated April 18, 2014

Dear Dr. McCormick,

In a letter dated April 18, 2014, you formally requested a determination under 7 AAC 07.031 as to whether a Certificate of Need (CON) is required to establish an independent diagnostic testing facility (IDTF), as defined in AS 18.07.111 and 7 AAC 07.900(23), of approximately 3,400 square feet with a refurbished 2006 Upright MRI for full body MRI services in Wasilla, Alaska. On March 18, 2014, the CON Program concluded that your previous request for determination, which was very similar to the current request, required a CON because the expenditures at issue exceeded the \$1.45 million statutory threshold under AS 18.07.031.

The certified cost estimates that are considered expenditures for purposes of the CON statutory threshold include the following:

DESCRIPTION	EXPENDITURE
• Purchase of building at 261 East Park Ave, Ph 1 #3, Wasilla:	\$250,000.00
• Remodeling of building—Certified cost estimates included architectural schematics and drawings:	\$282,595.00
• Office furniture:	\$509.00
• Design plans, working drawings for remodel of building are provided by Fonar:	\$0
• Purchase of equipment per 7 AAC 07.010(a)(4):	<u>\$800,001.00</u>
• TOTAL	\$1,333,105.00

The most notable difference between your previous request for determination and the current request is the revised addendum to the Fonar Quotation. The previous addendum classified the transaction concerning the MRI as a lease of equipment. The key terms of that lease included a payment schedule, a utilization fee for excess scans per month, a buyout provision, and a service contract. The service contract in the revised addendum is identical to the service contract in the previous addendum. While the CON Program acknowledges that it appears that the \$120,000 annual service contract may be excluded from the statutory expenditure threshold as routine maintenance, the remaining terms and the categorization of the equipment transaction merit further analysis.

Dr. McCormick
05/8/2014

First, the CON Program disagrees that the transaction concerning the MRI is “best characterized as a ‘lease.’” Although the arrangement is referred to as a lease, it clearly takes the form of a contract for purchase. This is specifically supported by the fact that “At the end of sixty (60) months, Diagnostic Imaging of Alaska shall own the MRI scanner for \$1.” Again, the arrangement is akin to a payment plan that is completed after month 60, not a lease. Accordingly, the full purchase of equipment is an expenditure that is subject to the threshold.

Determining the expenditure amount of the equipment is difficult because it requires assumptions about costs during the contract period. Based on the analysis in the previous determination, it was clear that Diagnostic Imaging of Alaska would realize a significant cost at the end of the 60-month term because it would be required to either pay a \$550,000 buyout option or pay the vendor to remove the scanner and return it to the vendor’s offices in New York. This term was essentially reduced to a \$1 buyout in the revised addendum, but the revised addendum appears to compensate for this reduction through a noticeably enhanced utilization fee for excess scans per month.

More specifically, the previous addendum included a term that required \$200 per scan in excess of 100 scans per month. The revised addendum now includes an enhanced term that requires \$400 per scan in excess of 100 per month and \$100 per scan in excess of 200 per month. Based on the current request for determination, it appears that Diagnostic Imaging of Alaska is assuming that the excess utilization fee will not be triggered because it assigns a total cost of \$800,001 to the equipment (\$800,000 in payments + \$1 buyout).

Given the reduction of the previous buyout option to the now \$1 buyout option, the CON Program finds it unconvincing that the excess utilization fee will not be triggered during the 60-month contract period. However, the CON Program is being asked to make a determination under 7 AAC 07.031(a)(1) as to whether the total cost of the expenditures provided in this request for determination will meet or exceed the statutory threshold set in AS 18.07.031.

Based on the information provided in the request for determination dated April 18, 2014, and the assumptions made by Diagnostic Imaging of Alaska in that request, the CON Program recognizes that the listed project cost of \$1,333,105.00 is below the \$1.45 million statutory threshold under AS 18.07.031. Diagnostic Imaging of Alaska is seeking to establish an IDTF that is subject to the State’s CON laws, so if the information and assumptions provided in the current request for determination are true and accurate, than a CON is not required for the proposed project because the expenditures at issue would not exceed the \$1.45 million statutory threshold under AS 18.07.031.

The CON Program cautions Diagnostic Imaging of Alaska that per 7 AAC 07.031(f):

“If the department determines that a certificate of need is not required, the requestor 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.” (emphasis added).

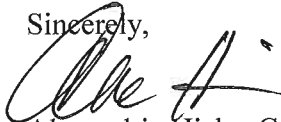
It is necessary to highlight 7 AAC 07.031(f) because, at the very least, if the expenditure amount of the project exceeds the statutory threshold at any point during the 60-month equipment agreement, Diagnostic Imaging of Alaska will not be in compliance with the State’s CON laws and will be subject to penalty. This is especially relevant because if the excess utilization fee is triggered, any

Dr. McCormick
05/8/2014

payment under that provision will be considered an expenditure that must be included in the aggregate project costs presented in this request for determination. More specifically, per 7 AAC 07.025(d)(1)-(2), the use and purchase of the MRI is dependent upon completion of payment of any excess utilization fees. Given that one component or activity (use and purchase) is dependent upon completion of another component (payment of excess utilization fees), the Department will consider these later payments as "a divided or phased activity to be a single activity for the purposes of AS 18.07." 7 AAC 07.025(d).

In conclusion, based on the request for determination, as presented, a CON is not required for the proposed project because the expenditures at issue would not exceed the \$1.45 million statutory threshold under AS 18.07.031. If you are dissatisfied with this determination, you may request reconsideration under 7 AAC 07.033. A request for reconsideration must be postmarked no later than 30 days after publication of the public notice. If you wish to revise your request for determination, or apply for a CON, please notify the CON Program immediately.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Hicks', written over the word 'Sincerely,'.

Alexandria Hicks, CON Coordinator