

# STATE OF ALASKA

## DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

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August 17, 2006

### Certified, Return Receipt Requested

Chakri Inampudi, M.D.  
Medical Director  
Imaging Associates of Providence, L.L.C.  
3427 East Tudor Road; Suite A  
Anchorage, AK 99507

Dear Dr. Inampudi,

I regret to inform you that notwithstanding my previous determinations to the contrary and for the reasons described below, Imaging Associates of Providence, LLC is required to submit an application for a certificate of need for the imaging facility under development in the Matanuska-Susitna Valley.

On May 4, 2006 I determined that in accordance with AS 18.07.111(8) the imaging facility proposed by Imaging Associates of Providence, LLC in the Matanuska-Susitna Valley was not a "health care facility" for the purposes of the certificate of need program and therefore a certificate of need was not required for this project to proceed. I reaffirmed my initial determination on June 14, 2006 citing 7 AAC 07.012 (b)(2) which I interpreted to conclude that the proposed Mat-Su facility was not an independent diagnostic testing facility insofar as the proposed facility would not be characterized as such for the purposes of Medicaid or Medicare reimbursement under 42. C.F.R. 410.33. Copies of my May 4<sup>th</sup> determination and June 14<sup>th</sup> reaffirmation are enclosed.

As you may or may not be aware, a substantially similar project has been concurrently under development by Alaska Open Imaging Center, LLC in Fairbanks. On March 23, 2006 a civil complaint on behalf of Fairbanks Memorial Hospital was filed in State Superior Court challenging my determination and subsequent reaffirmation that a certificate of need was not required for the Fairbanks imaging facility. My decisions in this regard were made on the same legal bases as my decisions regarding your proposed Mat-Su facility. Copies of my December 25, 2005 determination, March 1, 2006 decision on reconsideration, and the March 23, 2006 complaint are also enclosed.

On August 8, 2006 after two hours of oral argument, Superior Court Judge Niesje J. Steinkruger issued her ruling on the Fairbanks Memorial Hospital complaint from the bench. The Court found the following:

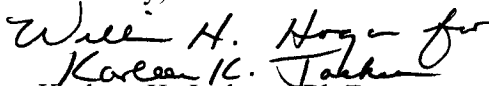
1. The facility proposed by Alaska Open Imaging Center, LLC is an “independent diagnostic testing facility” for the purposes of the certificate of need program; and
2. 7 AAC 07.012(b) is invalid because it did not take into account the clear legislative intent that entities such as the proposed imaging facility should be included in the certificate of need process.

A copy of the Court’s written order will be posted on the department’s certificate of need website under the entry for the Alaska Open Imaging Center, LLC Fairbanks project as soon as it is received.

On August 10, 2006 the Department of Health and Social Services proposed, consistent with the Court’s ruling of August 8<sup>th</sup>, a change to the certificate of need regulations to repeal 7 AAC 07.012(b)(2) described above. A copy of the proposed regulation is available at: <http://www.hss.state.ak.us/publicnotice/regulations.cfm> .

Based upon the above, it is the Department’s position that a certificate of need application for the proposed Imaging Associates of Providence, LLC independent diagnostic testing facility is required. Accordingly, please submit an application as soon as practicable and the department will do its utmost to assure that the application is reviewed and processed as quickly as is possible.

Sincerely,

  
Karleen K. Jackson, Ph.D.  
Commissioner

Enclosures

cc: Mr. Norman Stephens, CEO  
Mat-Su Regional Medical Center

Mr. Al Parrish, CEO  
Providence Health System of Alaska

Stacie Kraly, Chief Assistant Attorney General  
Department of Law

Ms. Pat Carr, Chief  
Office of the Commissioner/  
Health Planning & Systems Development