

# STATE OF ALASKA

## DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

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June 14, 2006

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Re: Mat-Su Regional Medical Center Request for Reconsideration

On June 1, 2006, you submitted, on behalf of Mat-Su Regional Medical Center, a request for reconsideration of the Commissioner's May 4, 2006 decision that Imaging Associates of Providence, LLC did not require a Certificate of Need for its proposed Mat-Su imaging services facility.

Under existing CON statutes, an independent diagnostic and testing facility is considered a health care facility subject to CON statutes; however, a physician's office is not considered a health care facility. *See* AS 18.07.011(8). Upon inclusion of the independent diagnostic testing facility in the statutory definition of "health care facility" the department promulgated regulations to define these types of health care facilities. It is my opinion that 7 AAC 07.012 controls this question and it provides in full:

**7 AAC 07.012. Independent diagnostic and testing facilities.** (a) In determining the amount expenditure under 7 AAC 07.010 for an independent diagnostic testing facility, if the facility is freestanding, the entire facility is considered for purposes of each applicable component set out in 7 AAC 07.010(a). If the facility is located in a building that houses one or more other activities, regardless of whether any of those activities is health-care related, when considering each applicable component, only the space associated with the diagnostic testing equipment is considered in determining the amount of an expenditure associated with space.

(b) For purposes of AS 18.07.111 and this section, "independent diagnostic testing facility" means a fixed-location facility or mobile facility that

(1) performs diagnostic testing using major diagnostic testing equipment; for purposes of this paragraph, "major diagnostic testing equipment" means

(A) magnetic resonance imaging (MRI) equipment;

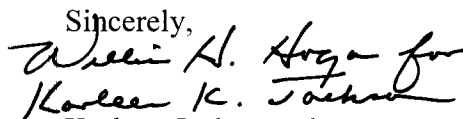
- (B) a cardiac catheterization laboratory and related imaging equipment;
- (C) ultrasound imaging equipment;
- (D) a positron emission tomography (PET) scanner;
- (E) a computed tomography (CT) scanner; or
- (F) a positron emission tomography/computed tomography (PET/CT) scanner; and

(2) is, or would be, required to enroll as an independent diagnostic testing facility for purposes of Medicare or Medicaid reimbursement under 42 C.F.R. 410.33.

Based upon my review of the material received by Imaging Associates of Providence, LLC and the controlling statutes and regulations, it continues to be my opinion, that Imaging Associates of Providence, LLC is not an independent diagnostic testing facility based upon the fact that they are not characterized as such for the purposes of billing pursuant to a determination by CMS. Accordingly, your request for reconsideration submitted on behalf of Mat-Su Regional Medical Center is **DENIED**.

This decision constitutes a final agency action. If you disagree with this decision, you may file an appeal with the superior court within 30 days of the date of this decision pursuant the Rules of Appellate Procedure.

Sincerely,



Karleen Jackson, Ph.D.  
Commissioner

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

Chakri Inampudi, M.D.  
Imaging Associates of Providence, L.L.C.

Mr. Al Parrish, CEO  
Providence Health System of Alaska

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Ms. Pat Carr, Chief  
DHSS Health Planning & Systems Development