STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

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October 31, 2006

Certified, Return Receipt Requested
Chakri Inampudi, M.D.
Medical Director
Imaging Associates of Providence, LLC
3427 East Tudor Road; Suite A
Anchorage, AK 99507

Dear Dr. Inampudi,

On October 10, 2006, you submitted a request for reconsideration of my September 22, 2006 decision that a Certificate of Need is required for the imaging facility operated by Imaging Associates of Providence, LLC, on Abbott Road in Anchorage, Alaska.

Based upon my review of the additional material received by Imaging Associates of Providence, LLC, the controlling statutes and regulations, and the recent decision of the Superior Court, it continues to be my opinion that the Abbott Road facility of Imaging Associates of Providence, LLC, is an independent diagnostic testing facility for the purposes of the certificate of need program. Accordingly, my September 22, 2006 decision in this regard is reaffirmed on reconsideration.

Analysis

With passage of House Bill 511 (Chapter 48, SLA 2004) and the inclusion of independent diagnostic testing facilities under the definition of "health care facility" at AS 18.07.011(8), regulations were promulgated by the department to further refine the definition of independent diagnostic and testing facility as follows:

> **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.

On August 8, 2006 Superior Court Judge Niesje J. Steinkruger found "that the definition of independent diagnostic testing facility in the regulation is inconsistent with the legislative intent behind HB 511's addition of independent diagnostic treatment facilities to the definition of health care facility." Specifically, Judge Steinkruger noted that the "Medicare, Medicaid designation and definition independent diagnostic treatment facility is set out for billing purposes, not for what the Alaska Legislature intended for application for a certificate of need." A copy of the transcript of Judge Steinkruger's ruling from the bench is attached.

Based on the Court's findings, the department immediately proposed to repeal 7 AAC 07.012(b)(2) cited above.

In her findings Judge Steinkruger also notes that "Clearly, the legislature expected Alaska Open Imaging **and similar imaging facilities** [*emphasis added*] to be included in the certificate of need requirements." The Court also noted that the "certificate of need program is designed to plan efficient use of health care facilities, prevent increased costs that may result from under-utilization of available facilities and provide high-quality care by insuring a sufficiently high volume that the practitioner is proficient in performing the procedure."

I believe the Abbott Road imaging facility operated by Imaging Associates of Providence, LLC, is substantially similar to the imaging facility operated by Alaska Open Imaging Center in Fairbanks and therefore Judge Steinkruger's findings are applicable. It is apparent to me that the phrase "similar imaging facilities" is used by the Court in the context of the array of services provided at a facility—not in reference to the ownership or organizational structure of the facility as you suggest in your request for reconsideration.

Finally, while it is true as you indicate in your request that physicians' offices are exempt from certificate of need requirements under AS 18.07.011(8)(B), please note that under 7 AAC 07.012(a) the department has made it clear that ONLY that portion of a facility associated with the provision of imaging services is relevant to a certificate of need calculation for an independent diagnostic treatment facility. In other words, the underlying certificate of need statute and the department's regulations recognize that an independent diagnostic treatment facility may be co-located with other entities—including physicians' offices—and remain subject to certificate of need requirements.

If you disagree with this decision, you are entitled to a hearing under 7 AAC 07.080 provided a written request for a hearing is received by the department no later than 4:30 PM November 30, 2006. The department will conduct a requested hearing in accordance with AS 44.62.330-44.62.640.

Based on your previous statements that the Abbott Road and Mat-Su facilities operated Imaging Associates of Providence, LLC, are substantially the same relative to the applicability of the certificate of need statute, in the event you decide to appeal today's decision I assume you will be amenable to the consolidation of the existing Mat-Su appeal with an Abbott Road facility appeal in the interest of reducing both the time and expense involved in these proceedings.

Sincerely,

Karleen Jackson, Ph.D.
Commissioner

Enclosure

cc: Mr. Edward Lamb
Alaska Regional Hospital

Mr. Al Parrish, CEO
Providence Health System of Alaska

Ms. Stacie Kraly, AAG
Department of Law

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