

## OUR MISSION STATEMENT

*Our mission is  
to make the  
health care  
experience an  
Alaska  
Partnership  
and one that is  
competent,  
respectful,  
caring,  
compassionate  
and treats our  
patients,  
physicians,  
guests and  
each other as  
we ourselves  
would want to  
be treated.  
We are honest,  
ethical and  
fiscally  
responsible in  
all of our  
dealings.*



## Fax Transmittal Sheet

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SEP 09 2008  
CON Program

TO THE ATTENTION OF: Honorable Bill Hogan, Commissioner

COMPANY: Dept. of Health & SS

FAX NUMBER: 907-465-3068

DATE: 9/9/08 TIME: 10:35

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SENT BY: Paul Morris, CFO

DEPARTMENT: Administration

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September 09, 2008

VIA US MAIL AND FACSIMILE (907) 465-3068

Honorable Bill Hogan, Commissioner  
Department of Health & Social Services  
P.O. Box 110601  
Juneau, Alaska 99811-0601

RECEIVED  
SEP 09 2008  
CON Program

Re: **Request for Determination, 7 AAC 07.031**  
Purchase of certain Alaska Open Imaging Center, LLC Assets

Dear Commissioner Hogan:

Galen Hospital Alaska, Inc. ("Galen") is the legal entity that owns and operates Alaska Regional Hospital ("ARH"). An affiliate entity of Galen ("Buyer") intends to purchase the assets of certain imaging facilities currently owned and operated by Alaska Open Imaging Centers ("AOIC"). It is Buyer's intent to purchase, own and operate the assets at the three facilities identified below. For the reasons stated below, Buyer believes that no certificate of need ("CON") is required to purchase, own and operate the AOIC assets at these facilities. Nevertheless, Buyer wants to make sure that there are no CON issues that would prevent its purchase of the AOIC facilities or negatively impact their subsequent operation of the AOIC facilities. Thus, Buyer submits this request asking for a letter of determination holding that a CON review is not required in order for Buyer to purchase, own, and operate the AOIC assets at the facilities.

In addition to purchasing the assets of the three AOIC facilities identified below, Buyer also intends to purchase used Magnetic Resonance Imaging equipment ("MRI") from AOIC. As you may know, AOIC no longer operates a facility in Fairbanks. However, AOIC still owns an MRI in Fairbanks which it is leasing to a physician's office. Buyer intends to purchase this used Fairbanks MRI and install it in the Wasilla facility. The total cost of purchasing the MRI and transporting and installing it in Wasilla will be less than \$1,200,000. The Buyer believes that the purchase and installation of this MRI does not trigger a CON review since the total purchase and installation cost is less than \$1,200,000.



### AOIC Assets to be Purchased

Currently, AOIC owns assets and operates three facilities in Alaska in Wasilla, Anchorage, and Soldotna. Buyer intends to purchase the assets of these three facilities. Specifically, Buyer intends to purchase the assets of the following three AOIC facilities:

- 1) Wasilla: 1751 East Gardner Way, Suite B, Wasilla, Alaska 99654.
- 2) Anchorage: 6911 DeBarr Road, Anchorage, Alaska 99504.
- 3) Soldotna: 35670 Kenai Spur Highway, Suite 104, Soldotna, Alaska 99669.

For purposes of this letter the term "the AOIC facilities" refers only to the three facilities listed above.

Buyer will *not* be purchasing assets of the former AOIC facility in Fairbanks located at 3419 Airport Way, Suite D, Fairbanks, Alaska 99709. As used in this letter, the term "AOIC facilities" specifically *excludes* this Fairbanks facility. However, as noted above, Buyer will be purchasing a used MRI that is currently located in Fairbanks.

### Buyer Purchase of the AOIC Assets

Based on discussions to date, Buyer believes that the transaction with AOIC would be a complete purchase of the assets of the three AOIC facilities by Buyer. The total cost for the assets of the three AOIC facilities would exceed the expenditure threshold set in AS 18.07.031. No new facilities would be built. No new registered services would be added to the already existing ARH health services. In short, the AOIC facilities would operate very much as they have in the past except they would now be owned by Buyer and staffed by Buyer employees.

### A Certificate of Need Is Not Required for the Purchase of the AOIC Assets

The implementing statute for the CON program is AS 18.07.031:

(a) . . . a person may not make an expenditure of \$1,000,000<sup>1</sup> or more for any of the following unless authorized under the terms of a certificate of need issued by the department:

- (1) construction of a health care facility;
- (2) alteration of the bed capacity of a health care facility; or
- (3) addition of a category of health services provided by a health care facility.

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<sup>1</sup> The overall statutory scheme provides for automatic escalation of this \$1,000,000 threshold so that the current threshold is \$1,200,000.

The purchase price of the AOIC assets exceeds \$1,200,000, the current threshold. However, the purchase of the AOIC assets does **not** fall within any of the three categories identified in AS 18.07.031 (a) (1)-(3), thus making this statute inapplicable.

The purchase of the AOIC assets does not constitute the "construction" of a health care facility under AS 18.07.031 (a)(1). The definition of "construction" only includes "erection, building, alteration, reconstruction, improvement, extension, or modification of a health care facility. . . ." AS 18.07.111 (6). Since all of the AOIC facilities are already built and have been in operation for many years, the purchase of the assets located at these facilities could not be considered "construction" as defined by AS 18.07.111 (6).

The purchase of the AOIC assets does not involve "the alteration of bed capacity" since none of the AOIC facilities have bed capacity. They are all outpatient facilities. Therefore, AS 18.07.031 (a)(2) does not apply.

The purchase of the AOIC assets does not involve the addition of a category of health services provided by a health care facility. ARH already supplies a wide variety of imaging services. The purchase of the AOIC assets increases ARH's capacity of a category of health services already provided by ARH, but it does not add a category of health services. Therefore, AS 18.07.031 (a)(3) does not apply.

Since none of the three subsections of AS 18.07.031(a) are met, the statute does not apply and Buyer should not be required to file a CON Application.

#### The AOIC Facilities Are Not "Health Care Facilities" Subject to CON Review

As you know, the current definition of "health care facility" includes independent diagnostic testing facilities ("IDTF"). See, AS 18.07.111 (8). However, when the AOIC facilities were constructed in Wasilla, Anchorage, and Soldotna, the definition of "health care facility" did **not** include IDTFs. Further, prior to the change in definition of "health care facility" to include IDTFs, the Department determined that imaging centers such as the AOIC facilities were **not** considered a "health care facility" under the then-existing definition. Thus, in October of 2000, AOIC contacted the Department of Health and Social Services with respect to its intent to purchase and operate imaging equipment in Wasilla, Alaska. The DHSS sent a determination letter dated October 31, 2000, to AOIC ruling that AOIC did not need to obtain a CON because they were not considered to be a "health care facility":

I received your letter of intent for the purchase of a Toshiba Spiral CT scanner that will be located at the Alaska Open Imaging Center at 1751 East Gardner Way in Wasilla. . .  
.[Y]our business is not considered a "health care facility" as defined by the State of Alaska certificate of need program.  
Therefore, **this project is not required to go through the**



**certificate of need process because it is not for a "health care facility." (Emphasis added).**

A copy of the October 2000 DHSS determination letter is attached hereto for your convenience.

Even though the DHSS determination is specific to AOIC's Wasilla facility, the same legal reasoning would apply to all three of the AOIC facilities involved in the transaction between AOIC and Buyer. All three of the AOIC facilities were built and placed in operation many years prior to any change in the definition of a "health care facility" that could even arguably include any of these three facilities. Therefore, the determination that the AOIC facilities are not "health care facilities" when opened to the public would continue to apply with respect to these specific facilities.<sup>2</sup>

Buyer believes that since it is purchasing assets of an existing business and merely intends to continue operating that business in the same manner providing the same services which have been provided over the years, the purchase of the assets of the AOIC facilities should not require Buyer to go through the CON process.

#### A Certificate of Need Is Not Required for the Purchase of the Used Fairbanks MRI

AOIC owns an MRI currently located in Fairbanks, Alaska. Buyer intends to purchase this MRI for \$750,000 provided that an independent third party appraiser certifies the fair market value of the MRI to be \$750,000 or less. Once purchased, Buyer intends to transport the MRI from Fairbanks to Wasilla and install the MRI in the Wasilla facility. The total cost of purchasing, shipping and installing the MRI in the Wasilla facility, as well as any remodeling of the Wasilla facility that might be required for the used MRI, will be less than \$1,200,000.

Buyer believes that since the total cost of purchasing, transporting, and installing the MRI (including any costs associated with remodeling the existing Wasilla facility) is less

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<sup>2</sup> The proposed purchase of the assets located at the AOIC facilities is easily distinguishable from the issues addressed in *In the Consolidated Matters of Imaging Associates of Providence*, Case Nos. 06-0743 DHS and 06-0764 DHS, hereinafter referred to as *IAP*. In the *IAP* case, the issues concerned the amended definition of a "health care facility" which specifically **includes** IDTFs within the definition. Buyer believes that the AOIC facilities are **not** IDTFs. Even if one were to argue that the AOIC facilities might be considered IDTFs, all of the facilities were built and placed in operation **prior to** the definition of "health care facility" being amended to include IDTFs. Therefore, the amended definition does not apply in any event. The AOIC facilities are not IDTFs and even if they were, it would be improper under Alaska law to apply the amended definition of a "health care facility" (which includes IDTFs) retroactively to the AOIC facilities. *Alaska Department of Health & Social Services v. Valley Hospital Association*, 116 P.3d 580, 584 (Alaska 2005).

than the current statutory threshold of \$1,200,000, a CON is not needed to purchase and move the MRI from Fairbanks to Wasilla and then operate that MRI in Wasilla.

Based on the foregoing, Buyer respectfully requests your determination that (i) a CON review is not necessary in order for Buyer to purchase, own, and operate the assets of the three AOIC facilities identified, and (ii) no CON is required for the purchase, transport, installation and operation of the used Fairbanks MRI in the Wasilla facility.

Thank you for your consideration of this matter.

Very truly yours,

ALASKA REGIONAL HOSPITAL



By  
Paul Morris, CFO

SDR:sdr

Enclosure

cc: Stacie Kraly, Esq. (Attorney General's Office by fax (907) 465-2539)  
Maureen Joyce, Esq. (HCA, Inc.)  
Paul Morris, CFO, Alaska Regional Hospital  
Stephen D. Rose, Esq.