



THE STATE  
of **ALASKA**

GOVERNOR SEAN PARNELL

Department of  
Health and Social Services

CERTIFICATE OF NEED PROGRAM

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March 18, 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

Dear Dr. McCormick,

In a letter dated January 28, 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. You updated this request by letter on January 31, 2014.

In response to your request, the CON Program sent you a letter dated February 11, 2014 with additional questions. You responded to those questions by letter on February 25, 2014.

After review of the certified cost estimates and other information submitted with the request for determination, it has been determined that a CON is required for the proposed project because the expenditures at issue exceed 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
• Lease of equipment per 7 AAC 07.010(a)(8)(A):	<u>\$1,350,000.00</u>
• TOTAL	\$1,883,104.00

In the request for determination, you correctly noted that the expenditure amount for the lease of the MRI unit is calculated under a net present value (NPV) analysis per 7 AAC 07.010(a)(8)(A). However, your NPV analysis, which resulted in a NPV of \$0 was incorrect. The NPV analysis looks

at the total lease payments made over a specific period of time. The specific period of time is the useful life of the asset minus the existing age of the asset.

Your NPV analysis identified the useful life of the asset as 5 years, and the existing age of the asset as 7 years. Since using these numbers results in a negative time period, you concluded that the NPV equals \$0. The CON Program disagrees with your assessment of the existing age of the asset. Per the lease agreement submitted with the request for determination, the transaction at issue is for a "refurbished Upright MRI scanner." Since the scanner is refurbished, the existing age of the asset is 0. Accordingly, the specific period of time to evaluate total lease payments is 5 years (useful life of the asset – existing age of the asset  $\rightarrow 5 - 0 = 5$  years). The preliminary total lease payments made over 5 years is \$800,000.

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 cost of the \$550,000 "annual buyout option" is an expenditure that is subject to the threshold. Per the lease agreement submitted with the request for determination:

Diagnostic Imaging of Alaska will also have an annual buyout option of \$550,000 to terminate this excess utilization payment provision in the lease agreement. The lessor retains title to the MRI scanner throughout the sixty (60) month term of this agreement. At the end of the sixty (60) months, Diagnostic Imaging of Alaska can either exercise the \$550,000 buyout option, or pay Fonar to remove the scanner and return it to Fonar's offices Melville, NY.

Limiting the expenditure associated with the MRI to \$800,000 would be incorrect because it fails to capture a cost that will be necessary to complete the transaction for the MRI—Diagnostic Imaging of Alaska will either pay the \$550,000 buyout option or pay the vendor to remove the scanner and return it to the vendor's offices in New York. Per 7 AAC 07.025(d)(1)-(2), the receipt and operational component of the MRI is financed with, acquired with, and dependent upon the completion of either the \$550,000 buyout option or payment to remove and relocate the machine to New York. Accordingly, the Department considers this "divided or phased activity to be a single activity for the purposes of AS 18.07." 7 AAC 07.025(d).

Since the request for determination only includes a cost estimate for the buyout option, the \$550,000 cost must be added to the total lease payments, making the NPV of the lease \$1,350,000.

In conclusion, a CON application must be submitted and approved before the proposed activity may begin. 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.

Sincerely,



Alexandria Hicks, CON Coordinator