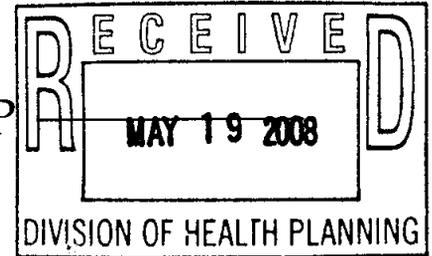


TROUTMAN SANDERS LLP
ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

BANK OF AMERICA PLAZA
600 PEACHTREE STREET, N.E. - SUITE 5200
ATLANTA, GEORGIA 30308-2216
www.troutmansanders.com
TELEPHONE: 404-885-3000
FACSIMILE: 404-885-3900



Katherine H. Forseth
katherine.forseth@troutmansanders.com

Direct Dial: 404-885-3374
Direct Fax: 404-962-6777

May 16, 2008

Clyde L. Reese III
Executive Director, Division of Health Planning
Georgia Department of Community Health
Two Peachtree Street, NW, 40th Floor
Atlanta, GA 30303

Re: Interpretation of S.B. 433

Dear Clyde:

This letter is to request a determination with respect to the Department of Community Health's (the "Department") interpretation of the implications of newly passed S.B. 433 on a proposed equipment purchase by a group practice of radiologists, Atlantic Radiology Associates, LLC (the "Group").

1. Does the new \$1,000,000 equipment expenditure exemption apply to a physician group consisting of board-certified radiologists?

The Group consists of ten members who are all licensed physicians and board certified in radiology. The Group is interested in developing an imaging center in Pooler, Georgia (the "Center"). The Center will be part of the Group's offices, and will not be available for use by physicians who are not members of the Group. The Group currently contemplates putting a magnetic resonance imaging ("MRI") unit in a leased building pursuant to a letter of nonreviewability, but, if costs permit, may also add an ultrasound and mammography unit to the Center as well.

Under the current rules, the Group must include the value of all equipment purchased simultaneously, the build out for the leased space, furniture, fixtures, and other equipment in the costs and, in order to develop the Center without first obtaining a certificate of need ("CON"), the total value of these items must not exceed \$890,646.

Under O.C.G.A. § 31-6-40(a)(3) (which goes into effect on July 1, 2008), no CON is required for the purchase or lease of diagnostic or therapeutic equipment with a value in excess

Clyde L. Reese III
May 16, 2008
Page 2

of \$1,000,000 when the purchase is made by or on behalf of a diagnostic, treatment, or rehabilitation center ("DTRC") provided that the "diagnostic or other imaging services that are not offered in a hospital or in the offices of an individual private physician or single group practice of physicians exclusively for use on patients of that physician or group practice shall be deemed to be a new institutional health service regardless of the cost of equipment." O.C.G.A. § 31-6-40(a)(3).

This will permit physician groups to purchase imaging equipment with a value of up to \$1,000,000 (which amount will not include build out of the space) for use in their own offices on their own patients without obtaining a certificate of need. We believe that this section was intended to include physician groups of any specialty (as well as multi-specialty physician groups) and therefore would apply to radiologists. For radiology group practices with their own imaging equipment, other physicians generally refer their patients to the radiologist for a diagnostic imaging test and interpretation of that test. The radiology group provides both the technical component and the professional component of the exam. Then, the patient returns to his or her other physician (who may be a primary care provider or a specialist) for further treatment if necessary. For the purposes of the diagnostic imaging exam and interpretation, the patients are the patients "of the group" within the meaning of the statute. The Center will not be available for physicians outside the Group for provision of the technical component only of a diagnostic imaging study, nor will the Group lease equipment on a "per click" basis to physicians outside the Group. Accordingly, the Center will be used solely by the Group for patients of the Group as required by O.C.G.A. § 31-6-40(a)(3). This is distinguishable from non-physician owned diagnostic imaging centers that perform the technical component of the exam and contract with radiologists or other qualified physicians for the professional interpretation of the exam.

We do not believe that the General Assembly intended to exclude one particular medical specialty when it wrote this section; instead we believe it is intended to apply to free-standing imaging centers that are not part of any physician group practice. Such centers may contract with individual radiologists or radiology groups to purchase the professional component, but the centers themselves are not part of the radiologist's practice. Further, some such centers allow physicians to purchase only the technical component of the exam and the referring physicians provide their own interpretations.

This interpretation is consistent with another portion of the revised CON law, which exempts from CON review the "Expansion of services by an imaging center based on a population needs methodology taking into consideration whether the population residing in the area served by the imaging center has a need for expanded services, as determined by the department in accordance with its rules and regulation if such imaging center...is owned by a hospital or by a physician or a group of physicians comprising at least 80 percent ownership who are currently board certified in radiology." See O.C.G.A. § 31-6-47(a)(20)(B). Clearly, the

Clyde L. Reese III
May 16, 2008
Page 3

General Assembly recognized that some physician groups consist of board-certified radiologists and certain provisions could be made that related to such subset of physicians. However, the General Assembly did not choose to distinguish board-certified radiologists from other physician group practices in drafting O.C.G.A. § 31-6-40(a)(3).

We request your confirmation that our interpretation that O.C.G.A. § 31-6-40(a)(3) applies to physician group practices consisting of board-certified radiologists.

2. Does x-ray, fluoroscopy, or ultrasound equipment count toward the \$1,000,000 threshold?

The new O.C.G.A. § 31-6-2(15) defines “diagnostic imaging” as: “magnetic resonance imaging, computed tomography (CT) scanning, positron emission tomography (PET) scanning, positron emission tomography/computed tomography, and other advanced imaging services as defined by the department by rule, but such term shall not include X-rays, fluoroscopy, or ultrasound services.”

O.C.G.A. § 31-6-40(a)(3) exempts from CON review the purchase of “diagnostic or therapeutic equipment” with a value in excess of \$1,000,000 when acquired for use in a hospital or in the offices of an individual private physician or single group practice of physicians. Since x-ray, fluoroscopy, and ultrasound are no longer considered “diagnostic imaging” for purposes of the CON statute, will the Department continue to include the valuation of x-ray, fluoroscopy, and ultrasound equipment toward the equipment expenditure threshold (which applies only to diagnostic or therapeutic equipment) for purposes of determining the value of other items of equipment (such as a MRI unit) under O.C.G.A. § 31-6-40(a)(3)?

3. Will furniture, fixtures, and equipment not specifically related to the functionality of the imaging equipment be included in the valuation?

Under the Department’s current rules, in addition to build out and functionally related equipment (such as chillers and laser cameras), any item purchased at the same time as the equipment, such as waiting room chairs, reception chairs, break room tables, end tables, office computers, file cabinets, and office furniture must be included in the valuation of equipment even though such furniture and equipment are not directly related to the functionality of the equipment. Under new O.C.G.A. § 31-6-40(a)(3), build out is no longer included in the valuation, which indicates that the General Assembly intended for items to be included in calculating the equipment expenditure should only be those items actually required to make the equipment functional (e.g., software, laser cameras, and initial warranty and service agreements). Will the Department continue to include non-functionally related furniture and equipment in the valuation?

TROUTMAN SANDERS LLP
ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

Clyde L. Reese III
May 16, 2008
Page 4

We appreciate your assistance in clarifying the new statutes. Should you need any additional information, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Katherine Forseth". The signature is written in a cursive, flowing style.

Katherine H. Forseth

KHF/dlh