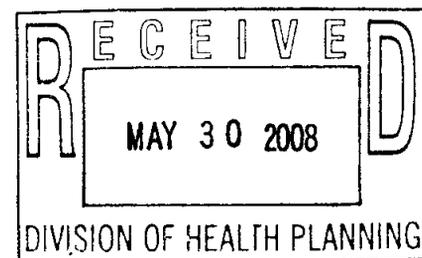


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May 30, 2008

**VIA HAND DELIVERY AND U.S. MAIL**

Clyde L. Reese III, Esq.  
General Counsel  
Department of Community Health  
2 Peachtree Street, 5th Floor  
Atlanta, Georgia 30303

**Re: Request for Determination Regarding Applicability of Senate Bill 433**

Dear Mr. Reese:

This law firm represents Novant Health, Inc. ("Novant"). Novant is a not-for-profit hospital system, which wholly owns and operates several hospitals, including Forsyth Medical Center, a 961-bed tertiary care hospital in North Carolina. This hospital system also wholly owns the numerous free-standing imaging centers that MedQuest, Inc. or one of its direct subsidiaries (collectively, "MedQuest") developed here in Georgia.

We are submitting the following two questions in accordance with the Department of Community Health's ("Department") procedure for accepting Requests for Determination from May 1, 2008 through May 31, 2008 regarding the applicability of Senate Bill 433.

**Question No. 1**

Our first question relates to the Department's interpretation of the newly enacted exemptions contained in O.C.G.A. § 31-6-47(10) and (10.1). According to these Code Sections, the CON requirement does not apply to:

(10) Expenditures of less than \$870,000.00 for any minor or major repair or replacement of equipment by a health care facility that is not owned by a group practice of physicians or a hospital and that provides diagnostic imaging services if such facility received a letter of nonreviewability from the department prior to July 1, 2008. This paragraph shall not apply to such facilities in rural counties;

(10.1) Except as provided in paragraph (10) of this subsection, expenditures for the minor or major repair of a health care facility or a facility that is exempt from the requirements of this chapter, parts thereof or services provided or equipment used therein; or the replacement of equipment, including but not limited to CT scanners previously approved for a certificate of need.

Taken together, it appears from these Code Sections that:

- O.C.G.A. § 31-6-47(a)(10) allows diagnostic imaging facilities that received a letter of nonreviewability ("LNR") before July 1, 2008 and which are not owned by a group practice of physicians or a hospital to replace their equipment without triggering certificate of need ("CON") review as long as the value of the replacement equipment is below \$870,000.00; and
- O.C.G.A. § 31-6-47(a)(10.1) authorizes diagnostic imaging facilities that are owned by a group practice of physicians or a hospital to replace their equipment, irrespective of its value.

As a result, a hospital system, like Novant, should be able to replace its imaging equipment even if the replacement equipment costs more than \$870,000.00. We respectfully request the Department's determination regarding the same.

#### Question No. 2

Our next question involves the grandfathering provision contained in O.C.G.A. § 31-6-40(c)(1) and the new regulations imposed upon these grandfathered facilities by O.C.G.A. § 31-6-40(c)(2).

According to O.C.G.A. § 31-6-40(c)(1), diagnostic imaging facilities that operated pursuant to an exemption granted by the Department do not have to obtain a CON to continue to offer services. However, these previously exempt facilities (which we assume include those facilities that received a LNR, those facilities that operated equipment below the equipment expenditure threshold without a LNR and those facilities that received an exemption ruling under H.B. 508) are grandfathered from the new CON requirement applicable to imaging centers not owned by a physician group practice or a hospital.

However, these grandfathered facilities must comply with certain rigorous CON standards. First, these facilities must notify the Department of their name, ownership, location and services before December 30, 2008. See O.C.G.A. §§ 31-6-40(c)(2)(A) and 31-6-70(e)(1). Facilities that fail to provide such notice may be fined up to \$1,000.00 per day. See O.C.G.A. § 31-6-70(e)(1).

Second, these newly regulated facilities must provide detailed annual reports to the Department. O.C.G.A. § 31-6-40(c)(2)(B). The annual report must contain the following information:

- (1) total gross revenues;
- (2) bad debts;
- (3) amounts of free care extended, including bad debts;
- (4) contractual adjustments;
- (5) amounts of care provided under a Hill-Burton commitment;
- (6) amounts of charity care provided to indigent persons;
- (7) amounts of outside sources of funding from governmental entities, philanthropic groups, or any other source, including the proportion of any such funding dedicated to the care of indigent persons; and
- (8) for cases involving indigent persons:
  - (A) the number of persons treated;
  - (B) the number of inpatients and outpatients;
  - (C) total patient days;
  - (D) the number of patients categorized by county of residence; and
  - (E) the indigent care costs incurred by the health care facility by county of residence.

See O.C.G.A. § 31-6-70(b). Facilities that fail to file these reports may be fined up to \$1,000.00 per day. See O.C.G.A. § 31-6-70(e)(1).

Third, these previously exempt facilities must now satisfy certain Medicaid and uncompensated care requirements. Specifically, if the facility participates in the Medicaid and PeachCare (if the facility treats children) programs, the facility must treat Medicaid and PeachCare patients. These facilities must also provide indigent and charity care at a level that is equal to or greater than 2% of the facility's adjusted gross revenue. O.C.G.A. § 31-6-40(c)(2)(C)(i).

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Fourth, O.C.G.A. § 31-6-40(c)(2)(C)(ii) requires facilities that do not participate in the Medicaid or PeachCare (as applicable) programs to provide care to indigent and charity patients at a level that equals or exceeds 4% of its adjusted gross revenue under certain conditions.

No doubt, these grandfathered facilities are now subject to intensive CON regulation. This, of course, supports our conclusion that these facilities now constitute health care facilities under the CON law.

Again, while the diagnostic imaging facilities Novant owns should qualify for the replacement exemption contained in O.C.G.A. § 31-6-47(a)(10.1) for hospital-owned facilities, please confirm that at a minimum, these newly regulated facilities now constitute health care facilities under the CON law. As result, please confirm that these health care facilities qualify for the \$870,000.00 replacement exemption contained in O.C.G.A. § 31-6-47(a)(10).

We respectfully request your determination with respect to these matters.

Sincerely,

RAY & SHERMAN, LLC



Jennifer Crick Monroe

cc: John W. Ray, Jr., Esq.  
Per B. Normark, Esq.