

802.40

Confirmed - no filings required. MV concurs.

Walsh, Kathryn

From: [REDACTED]
Sent: Thursday, March 15, 2007 2:05 PM
To: Walsh, Kathryn
Subject: Confirmation of PNO informal guidance regarding exemption from HSR filing under 16 CFR 802.40

Greetings, Kate--

I would like to obtain written confirmation of the informal guidance you gave in our phone conversation on March 1, 2007 and again on March 2, 2007 to the effect that no HSR filing is necessary for the transaction described in my email of March 1, 2007. Below is a description of the transaction I previously described but with some additional facts to ensure that you have all of the information necessary to confirm your guidance that no filing is necessary because the particular transaction is exempt under 16 C.F.R. 802.40.

In our transaction, two nonprofit 501(c)(3) hospital systems (System A and System B) have agreed to affiliate through the creation of a new nonprofit system parent, pursuant to an executed integration agreement (We represent System/Hospital A). The new nonprofit system parent, Newco, will be a self-perpetuating nonprofit, nonstock corporation under state law. The parties intend Newco to qualify under, and be operated as a Section 501(c)(3) organization.

Simultaneously with the execution of the integration agreement, Systems A and B have also entered into a Sponsorship Agreement with a third party, Entity C, a nonprofit hospital plan corporation that offers fully insured products and administers employer-funded health care plans to residents in the geographic area in which System A and System B operate. Under the terms of the Sponsorship Agreement, Entity C will contribute certain funding at the closing of the integration agreement to assist in effectuating the integration for the benefit of the community. The integration funding will be used by Newco to repay certain debt obligations of System B and the remaining amount will be used by Newco for integration costs, recruitment and service reconfiguration.

Each of System A, System B and Entity C will identify 5 individuals to serve on the initial board of Newco. The initial directors shall serve one-, two- or three-year terms. After expiration of the initial terms, Entity C shall appoint directors to replace or reappoint the initial Entity C directors and the non-Entity C Directors shall appoint all other Newco directors to serve three-year terms. However, Entity C's ability to appoint or reappoint directors to the Newco Board is limited to a period of 10 years from the closing date of the integration agreement. The terms of any Entity C directors still serving at that expiration of that time shall terminate and any vacancies shall be filled by the Newco directors.

Newco will be the sole member of each of the System A and B affiliates, including Hospital A and Hospital B. The existing parent entities of Hospitals A & B will merge into their respective hospitals and, by operation of law, will cease to have corporate existence at the closing of the integration agreement. Newco will govern the operation of the new health system, consisting of Hospitals A and B and their affiliates, and will retain certain reserved powers over management and operation of the health system. However, there will be no acquisition of assets, there are no voting securities involved, and there is no purchase price.

Please confirm your guidance that neither Newco, nor System A nor System B is required to file a HSR Premerger Notification (Form C4) with respect to the formation of Newco or the integration of System A and System B under Newco by virtue of the exemption under 16 CFR 802.40.

Thank you for your assistance in this matter. Please contact me or [REDACTED] if you have questions or need to further discuss.

Best Regards,

[REDACTED]