

801.40 [LLC formation]

August 9, 1996

VIA HAND DELIVERY

Richard B. Smith, Esquire
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 338
Sixth Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Hart-Scott-Rodino Reportability of
Limited Liability Company

Dear Mr. Smith:

We represent one of the founding members of a Virginia limited liability company (the "LLC"). The LLC will have as its purpose the operation of certain [REDACTED] facilities located in the [REDACTED]

The LLC is not to be organized or managed as a corporation. It will instead be organized and managed as to result in it being treated as a partnership for federal income tax purposes. The LLC is to dissolve upon the first to occur of the following: (a) the bankruptcy, dissolution, or any other occurrence which would legally disqualify the Manager¹ from acting hereunder; (b) the approval by the Members of an instrument dissolving the company; (c) the dissolution of the company by judicial decree; and (d) December 31, 2050. The members of the LLC (individually, a "Member" and collectively,

¹ The term "Manager" is a defined term in the Operating and Management Agreements. The rights and duties of the Manager are summarized in Attachment A.

[REDACTED]

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the "Members") will be (a) a Virginia non-stock, not-for-profit corporation ("Member A"), and (b) a Virginia for-profit corporation ("Member B"), which is a wholly-owned subsidiary of a publicly traded [REDACTED] corporation. Each Member will have a 50% equity interest in the LLC. Additionally, Member A will receive \$8 million from Member B upon closing the transaction.

The Members will manage the LLC, acting through a "Board of Governors" as set forth in the Operating Agreement. The Board will consist of a total of ten representatives of the Members (the "Governors"). Each Member will appoint five Governors. Each of the initial Governors will be an employee, director, officer or trustee of the appointing Member at the time of appointment. Each Governor will cast one vote. Each Governor will serve for a term of one year unless the Governor sooner resigns or is removed by the Member which appointed the Governor. Vacancies shall be filled by appointment by the Member which appointed the Governor whose position became vacant. The initial Chairman of the Board of Governors will be a Member A Governor as selected by the Member A Governors. Rights and Duties of the Board of Governors are more fully set forth in Attachment A.

Certain financial, technical, managerial and administrative support services will be performed by the "Manager" as set forth in the Management Agreement. Member B will be the Manager and will enter into a Management Agreement with the LLC. The Manager does not have the authority to do any act in contravention of the Operating Agreement or to reorganize or dissolve the LLC. Rights and Duties of the Manager are more fully set forth in Attachment A.

The parties believe that, on the basis of these facts, the transaction is not reportable under the Hart-Scott-Rodino Act. When you have reviewed this letter, please call me with your comments.

Sincerely yours,
[REDACTED]

8/12/96 - Called writer and left message that I agree with his conclusion that no 801.40 filing was required for the formation of the subject LLC.
R.B. Smith

ATTACHMENT A

[REDACTED] LLC

Manager Rights/Duties	Governing Board Rights/Duties
<i>Formation:</i> Manager is Member B and is retained by the LLC. Payment for the Manager's services is a percentage of the annual Patient Service Revenue.	<i>Formation:</i> Member A and Member B shall form the initial Board of Governors of the LLC by appointing 5 Member A Governors (from current directors, officers and trustees of Member A) and 5 Member B Governors (from current directors, officers and trustees of Member B). Vacancies will be filled by the LLC Member who initially appointed the governor whose seat became vacant.
Hire and Fire [REDACTED] Staff (Staff are employees of the Manager)	<i>Voting:</i> For major decisions, the necessary vote is by a majority of Member A Governors plus a specified number (tba) of Member B Governors For all other votes, approval is by a majority of all members of the Board of Governors.
May remove CEO and all other senior officers except the Chairman of the Board of the Board of Governors	May distribute excess cash to LLC members (upon failure of the manager to do so)
May request additional capital contributions of LLC Members	May change nature of the LLC's business
May distribute excess cash to LLC Members on a quarterly basis	Must approve the sale or transfer of assets of the LLC
May deposit all LLC funds into LLC accounts	Must approve admission of new members to the LLC
Keeps all books of accounts and LLC records	Must approve annual and capital budgets
Prepares financial statements	May incur (and must approve) debt in excess of \$10 million
Acts as "Tax Matters Partner" of the LLC under § 6231(a)(7) of the IRS Code	May declare dividends and distributions to members of the LLC
May acquire and enter in [REDACTED] contracts	May make significant changes to the Management Agreement
	Selects the CEO
	Selects the Chairman of the Board (<i>provided, however, that the Member A Governors shall select the initial Chairman of the Board from among the Member A Governors</i>)
	May change established policies of Member A or Member B healthcare facilities
	May make material changes to the Business Plan of the LLC
	Appoints members to the [REDACTED] Staff