Verne, B. Michael 801-2

From:	[redacted]
Sent:	Monday, March 31, 2014 8:59 PM
To:	Verne, B. Michael
Cc:	[redacted]
Subject:	HSR Hypothetical Regarding Strategic Relationship

Mike,

I am writing to confirm my understanding that the proposed strategic relationship described below is exempt from reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act").

Proposed Strategic Relationship

Two hospitals, Hospital A and Hospital B (collectively the "Hospitals"), and a physician group affiliated with one of the Hospitals, have entered into a Strategic Relationship Agreement (the "Agreement"). The Hospitals are non-profit corporations and have the same sole member (the "Member"). The Member has the power to approve budgets of the Hospitals and to remove, but not appoint directors of the Hospitals. Hospital A is a single specialty hospital that offers only an ABC service line. Hospital B is a general acute care hospital that offers a range of service lines, including certain ABC services.

It is the intent of the Agreement that over time that the ABC service lines of Hospital A and Hospital B will become clinically, financially, and operationally integrated and that ultimately these lines will be consolidated in a new Hospital A facility, that would operate under Hospital A's license ("New Hospital") and that would be co-located with or near to Hospital B. The various steps to fully implement the Agreement are anticipated to take a number of years. It is anticipated that the ABC service lines would not be consolidated any sooner than 2020, and then only if it is determined, through a joint planning process, to be feasible to develop the New Hospital and to locate it on or near the Hospital B campus.

There are steps that will occur immediately upon the Agreement becoming effective (or, as separately noted below, during the multi-year transition period until the New Hospital is built and opened ("Transition Period")) including:

(a) Hospital A and Hospital B will form a new limited liability company (the "Company") that will be involved in planning and decision-making aspects of the strategic relationship. Hospital A will hold an approximately 2/3 interest in the Company, and Hospital B will hold an approximately 1/3 interest in the Company. Hospital A will be the managing member of the Company with full authority to manage the day-to-day and ordinary course operations of the Company.

(b) Initially, the Company will be a shell entity. Further, initially, no capital will be contributed to the Company by either Hospital A or B, and no assets or operations of Hospital A or B will be transferred to the Company.

(c) Under the Agreement, Hospital A and B will continue to operate their separate ABC service lines, under their separate hospital licenses and on their separate balance sheets, during the Transition Period until the New Hospital is developed and opened (if it is determined to

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be feasible). But, Hospital A and Hospital B will, on the effective date of the Agreement and after incorporation of the Company, "virtually" integrate their ABC service lines by financially consolidating them, through the Agreement. Under the Agreement, Hospital A and Hospital B will share in the combined surplus (or losses) from both parties' ABC service lines in proportion to their interest in the Company. This will be annually determined and reconciled through payments between Hospital A and B under the Agreement, outside of the Company.

(d) The Company will enable the Hospitals to coordinate capital planning for their respective ABC service lines during the Transition Period. Soon after the effective date of the Agreement, the Hospitals will develop and maintain an ongoing multi-year strategic and capital plan for the respective ABC service lines which reflects mutually agreed capital and operating investment commitments. During the Transition Period, capital plans and budgets for each Hospital's ABC service lines will be subject to review and approval by the Company and the respective governing boards of each Hospital, and each Hospital will be accountable for implementing its respective approved capital plans.

(e) Each Hospital and various affiliates will be subject to a non-compete for the term of the Agreement that limits, absent approval of the Company's management board, various activities such as investing in or providing services to entities that compete with the Company or the ABC service lines of the Hospitals, agreements or affiliations, or related discussions, with any third party regarding ABC service line services, or materially expanding services or making material changes in the ABC service lines in a manner that competes with the Company or the other Hospital within a defined region (the "Region").

(f) Each Hospital and various affiliates also will be subject to a Company Right of First Opportunity provision for the term of the Agreement that limits, absent approval of the Company's management board, various activities such as investing in or providing services to entities that provide ABC service lines, agreements or affiliations, or related discussions, with any third party regarding ABC service line services, or materially expanding services or making material changes in the ABC service lines outside the Region without first offering the Company a reasonable right of first opportunity to participate and collaborate in such opportunity.

(g) During the Transition Period, the parties intend to take steps including designing, developing, and implementing Hospital A branded ABC services at potential expansion sites within the Region that are recommended by the Company and approved by the respective governing boards of the Hospitals. Certain of the expansion sites will be at hospitals owned by Hospital B.

(h) As soon as reasonably possible during the Transition Period, it is contemplated that Hospital A will directly or through the Company, begin to manage certain Hospital A branded ABC service line services on the Hospital B campus, on terms to be determined, once predicate work has been accomplished by Hospital B to permit those ABC services to be provided in a manner consistent with Hospital A's brand. It is the goal that at the end of the Transition Period, all ABC services provided at Hospital B will be managed and delivered under the Hospital A brand.

(i) As a part of the Agreement, Hospital A will grant a license to use its trademarks, trade names, copyrights, service names and service marks to the Company in connection with the provision of services for the ABC service lines at the approved expansion sites and on the Hospital B campus (to the extent ABC service line services on the Hospital B campus are managed by the Company or Hospital A).

(j) The Company and/or Hospital A as a subcontractor of the Company will be the exclusive provider of outside management and other support services for Hospital B's ABC service lines.

(k) During the Transition Period, the parties will maintain their separate medical staffs and academic affiliations, but will move toward tighter coordination and integration of their medical staffs, and their respective teaching programs.

(l) During the Transition Period, the parties will plan for integrated risk contracting for the Hospitals' ABC service lines in a legally compliant manner. It is contemplated that during the Transition Period that Hospital B's accountable care organization ("ACO"), which is responsible for risk-based payer contracting for hospitals and physicians affiliated with Hospital B, will open on a phased basis (starting on the effective date of the Agreement with one Hospital B owned community hospital site) to Hospital A and its affiliated physicians, so that they become "in network" for ACO purposes.

(m) The Agreement has an initial term of 50 years, and shall automatically renew for consecutive 10 year renewal terms, unless a Hospital provides written notice of termination 2 years prior to the expiration of the initial term or a renewal term, unless the Agreement is terminated by mutual agreement, or unless the Agreement is terminated under one of the Agreement "for cause" provisions (e.g., at the option of one of the Hospitals if the feasibility of the New Hospital has not been determined in a timely manner as provided for in the Agreement).

Conclusions

I understand that no aspects of the proposed strategic relationship described above that will take place immediately upon the effective date of the Agreement will trigger any HSR premerger notification filing. Specifically, I understand that none of those occurrences is viewed as an acquisition of assets or voting securities for HSR purposes. Nor will the interests in the Company being acquired by the Hospitals trigger the HSR size of transaction test since the Company will not hold assets at the point of formation (or for an indefinite period thereafter).

Further, I understand that none of the events or combination of events that will occur during the Transition Period and through the opening of the New Hospital will trigger any HSR premerger notification filing, subject to the possible exception that if Hospital A or Hospital B at some point transfers title to its ABC service line assets to the Company or another entity outside of the control of the person making the transfer, an HSR filing may thereby be triggered; but only if the thresholds for reportability are met and no exemption applies.

Please confirm if you agree that my conclusions and understandings are correct.

Thank you very much for your help.

Best regards,

AGREE
B
4/2/19

[redacted]

KW / DG CONCUR