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**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Friday, August 26, 2011 9:20 AM  
**To:** Verne, B. Michael  
**Subject:** HSR question

Mike,

I represent a hospital that is proposing to engage in an affiliation with a physician practice group. To effect the affiliation, the parties will engage in several related transactions. My initial reaction is that none of those transactions would trigger an HSR filing, but my review of relevant HSR informal interpretations has made the issue less clear. Here are the relevant facts as I know them.

As part of the affiliation, the hospital first plans to create a new tax exempt 501(c)(3) nonprofit corporation which will become the parent entity of the hospital. Assets and liabilities of the hospital would primarily remain in the current hospital corporate entity, but net proceeds for the hospital (revenues after hospital operational costs, allocate overhead, and long term debt's are paid) would flow up to the parent, which I will refer to herein as the Health System. Health System will act as an agent for the hospital and will bill and collect from payers on behalf of hospital, but using the hospital's existing provider number. It is my understanding that the newly created Health System will become the sole member of hospital, but I am not certain on this point.

Contemporaneous with the formation of Health System, Health System will enter into a management agreement with a third party physician practice group, which I will refer to as Clinic. The Clinic's shareholders would continue to hold most of the Clinic's assets (and existing debts), and the Clinic would maintain an independent board of directors to be elected by shareholders of the Clinic. However, all of Clinic's administrative functions would be performed by Health System under the management agreement. Health System would be paid a management fee by Clinic for performing day-to-day management of Clinic (including billing and collecting payment from payers on behalf of Clinic). In addition, Health System will enter into a lease agreement with the Clinic encompassing most of the building and equipment assets of the Clinic, under which the Health System would take on full responsibility for the asset's maintenance and enhancements. It is also contemplated that there will be an asset purchase agreement whereby Health System will acquire some other minor assets to provide working capital necessary for the operation of the Health System. It is my understanding that the assets being acquired by Health System from Clinic would be significantly less than \$66 million; indeed, likely less than \$10 million. The parties would also enter into a professional services agreement to secure the professional services of all physicians and other providers who practice at the Clinic on behalf of Health System.

The Health System will have its own board of directors. Initially, the board will consist of 15 members, 6 of which would be current physicians of Clinic, and 9 community members selected by the hospital's board of directors.

As part of the affiliation, a flow of funds would be worked out that would reward both Clinic and Hospital for cost-cutting, overall efficiency, and delivery of superior health care services.

For various regulatory and other reasons, the parties are not capable of merging or having one party acquire the other. While the Health System will not be acquiring assets or other interests of Clinic in excess of \$66 million, the management and other agreements between Health System and Clinic do provide Health System with some level of control over Clinic. At the same time, the Clinic will continue to have its own BOD (which will handle, for example, decisions relating to provider compensation and hiring/firing), as well as continue to have the same shareholders as are in place today, none of whom include the Hospital or Health System ).

As I indicated, I am not sure there is a filing here relating to any of the various transactions, but I would appreciate the FTC's thoughts on this. If there are additional facts you need to provide some guidance on whether a filing is required, please let me know. As always, thanks for your help.

Regards,  
[REDACTED]

AGREE - NOT REPORTABLE  
Bm  
8/30/11