802.20
801.10
801.40
Fees

April 2, 1993

VIA TELECOPIER AND FEDERAL EXPRESS

Patrick Sharpe, Esquire
Premerger Notification Office
H-303
Federal Trade Commission
Washington, DC 20580

Note: I am not an attorney

RE: Formation of

Dear Patrick: Staff Staff

This letter is a follow-up to our telephone conversation of March 26, 1992 wherein I requested the Federal Trade Commission's concurrence in the analysis of the above-referenced formation of and acquisition of under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR") and further requested that be permitted to make only one filing with respect to the formation of and acquisition of . You requested that I reduce my request to writing and the Federal Trade Commission (the "FTC") would respond in 48 hours or so, as its work-load permits. References herein to sections refer to the corresponding section of the rules promulgated by the FTC under the HSR (the "HSR Rules").

is engaged in interstate commerce and provides mental health and substance abuse utilization review and care management services. It was formed in 1990 as a wholly-owned subsidiary of ( ) has total assets in excess of $10 million as shown on its last regularly prepared balance sheet dated February 28, 1993 (total assets of approximately million) and annual net sales in excess of $25 million for its fiscal year

voting stock

ended December 31, 1992. voting securities consist entirely of one class of common stock (par value, $.01 per share) with 10,000 shares presently issued and outstanding (each such share is herein referred to as a "Share"). 8,000 Shares are issued in the name of and 2,000 Shares are issued in the name of The Shares are neither listed on a national securities exchange nor authorized to be quoted in any interdealer quotation system. purchased its Shares in 1992 for million in cash in a transaction not subject to reporting under HSR as did not at that time have $10 million in total assets and the value of the Shares acquired did not then exceed $15 million. Of course, that purchase also qualified for the small transaction exemption set forth in Sec. 802.20.

has agreed to sell its 8,000 Shares to a corporation organized by and pursuant to that certain Stock Purchase Agreement dated as of is being formed for the sole purpose of acquiring the is proposed to be capitalized by cash equity contribution and possible loan aggregating approximately million or less and cash equity contribution and possible loan aggregating approximately million or less. will control and be its ultimate parent entity. immediately subsequent to its capitalization, will purchase all of 8,000 Shares for cash of million and non-interest bearing promissory note in the amount of million, guaranteed severally in equal shares by each of and This results in a value of the acquisition of 8,000 Shares, calculated in accordance with Sec. 801.10(a)(2)(i), of million (the sum of the million in cash and million promissory note) or $4,900 per Share. Accordingly, the value of the acquisition by as the ultimate parent entity of of all the Shares, calculated pursuant to Secs. 801.10(a)(2)(i) and 801.10(c)(3), will be million (the sum of million and million calculated as stated in the next paragraph) and the value of the total assets held by , calculated pursuant to Sec. 801.40(c), will be million (the combined value of the cash to be contributed by each and million, and the face value of the promissory note guaranteed by and million).

what % of V/S to each shareholder

intends to contribute its 2,000 Shares in to after the closing of the acquisition of the 8,000 Shares. anticipates that the fair market value of that proposed contribution to be million (2,000 Shares at

per Share). If such Shares are included in the value of the total assets of at closing on the acquisition of the Shares, its total assets, calculated in accordance with Sec. 801.40(c), will be million (the combined value of the 2,000 Shares contributed by million, the value of the 8,000 Shares purchased by from million, and the face value of promissory note guaranteed by and million). Of course, the value of voting securities will still be only million after subtracting from its total assets the million liability to will issue 7,000 shares of its common stock, 5,000 to and 2,000 to which will constitute all of issued and outstanding voting securities.

Each of and is a non-stock, non-profit corporation, and is a incorporated under the Each of and has total assets and annual net sales in excess of $100 million and each is engaged in interstate commerce, primarily in the business of providing health insurance and related services.

Our analysis of the application of the HSR Rules to and is as follows:

801.40?

1. Pursuant to Sec. 801.41, is required to file in connection with the formation of as each of and has total assets and annual net sales in excess of $100 million and will have total assets in excess of $10 million.

2. is exempt from filing as an acquired person with respect to its own formation by reason of Sec. 802.41.

3. is required to file as the ultimate parent entity of in connection with acquisition of the 8,000 Shares from as will be deemed pursuant to Sec. 801.13 to hold all 10,000 of Shares (with a value of as a result of the acquisition. Of course, will have no filing obligation in connection with that acquisition as it will not control

Staff's

The purpose of this letter is to request (i) the FTC's concurrence in the above analysis and (ii) that be permitted to make only one filing in connection with these transactions.

We submit that there is little reason to require [redacted] to make two separate filings. The formation of [redacted] is merely one step in a single unitary transaction having no independent economic effect at all apart from the underlying acquisition of Shares.

[redacted] has informed us that they will not be filing in connection with either the formation of [redacted] or its acquisition of the 8,000 [redacted] Shares from [redacted] on the basis that its involvement in both transactions qualifies for the Sec. 802.20 small transaction exemption. *correct*

Accordingly, we hereby request that [redacted] be required to make only one filing in connection with the within described transactions, as [redacted] ultimate parent entity in its acquisition of the 8,000 Shares from [redacted] *one filing is ok—but two fees*

Should you have any questions or desire any further information, please do not hesitate to call me at the above-referenced number.

Very truly yours,

[redacted]

[redacted]

Called [redacted] 4-6-93.
Two filing fees are required for this transaction
PS

RS concurs.