

[REDACTED]

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[REDACTED]

December 5, 1994

VIA HAND DELIVERY

Richard B. Smith, Esquire  
Premerger Notification Office  
Federal Trade Commission  
Room 303  
6th Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20880

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DEC 9 1 51 PM '94  
FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION OFFICE

Dear Mr. Smith:

As we discussed recently over the phone, I would like some additional guidance and clarification on the application of the Hart-Scott-Rodino reporting requirements to the proposed formation of various regional [REDACTED] joint ventures. A description of the potential transaction is outlined below and a diagram is attached.

Four non-profit [REDACTED] systems, each with over \$100 million in total assets or net revenue, located in various regions of the same state are considering the formation of various regional, non-profit joint ventures ("NPJV(s)") to market [REDACTED] and other [REDACTED]. Although the exact percentages have not been determined, it is anticipated that each system will have a membership interest in each NPJV in which it participates. Referring to the enclosed diagram, not every [REDACTED] system will participate in every NPJV. Furthermore, at this time, it is unclear how much capital each party will contribute to the individual NPJVs; however, for purposes of this letter, please assume that each party will contribute in excess of \$15 million over a five-year period to each NPJV in which it participates.

In addition, the four [REDACTED] systems will jointly create a new centralized for-profit service company ("SC"). Although the exact percentage of ownership interests in the SC have not been determined, no party will control the SC (i.e., hold 50% or more of

<sup>1</sup> The NPJV(s) will be not for profit within the meaning of either Section 501(c)(1)-(4), (6)-(15), (17)-(20) or (d) of the Internal Revenue Code.

[REDACTED]

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the voting securities of the SC or be able to designate 50% or more of the directors of the SC).

The SC will be formed to centralize much of the management activity to be performed on behalf of the NPJVs. For instance, the SC will provide centralized marketing, information systems and a central point for managed-care contracting for the NPJVs. As the attached diagram shows, the SC and the other NPJVs will not be subsidiaries of each other.

Finally, each [REDACTED] system will remain viable, separate entities after this transaction is completed. No integration of the major assets of the [REDACTED] systems will take place, and the [REDACTED] systems will otherwise continue to compete against each other.

Under my interpretation of 16 C.F.R. § 801.40, and based on my discussion with you, since the NPJVs created by this transaction will be non-profit (see footnote 1), and because the parties will receive membership interests in the various NPJVs rather than voting securities, Section 801.40 would not apply and no reporting of the formation of any of the NPJVs would be required. Further, even if voting securities rather than membership interests in the NPJVs were received by the [REDACTED] systems, the formation of these NPJVs would be exempt from reporting under 16 C.F.R. § 802.40 regardless of the amount of capital contribution.

Regarding the SC to be established by all four of the [REDACTED], because this is a for-profit entity, the formation of this joint venture may be a reportable transaction. If the commerce requirement and size-of-the-parties test is met, each [REDACTED] system meeting the size-of-the-parties test and contributing over \$15 million in assets to the SC would be required to file a pre-merger notification form with respect to the formation of the SC and pay a \$45,000 filing fee. On the other hand, because no party to this transaction will gain control of the SC as that term is defined in 16 C.F.R. § 801.1(b), any [REDACTED] system which contemplates funding the SC with less than \$15 million would be exempt from filing under 16 C.F.R. § 802.20. Finally, it is also my understanding that the requirement to report the formation of the SC does not affect our conclusion that the formation of the various NPJVs are non-reportable transactions.

[REDACTED]

[REDACTED]

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The parties would like to begin the formation of these joint ventures as soon as possible. I believe that this letter incorporates the details of the transaction and conclusions regarding the reporting requirements which we discussed over the phone. I hope to receive additional confirmation from your office regarding the conclusions we have reached within the next ten days. However, if I do not hear from you, I will assume, based on our previous phone conversation, that these conclusions are correct, and I will advise my clients that they may proceed with their intended plans.

I realize that despite my efforts to simplify matters, the complexity of this transaction may still create some confusion. Therefore, please call me if you need any additional information or clarification as you analyze this transaction.

Thanks for your help.

Sincerely yours,  
[REDACTED]

Enclosure

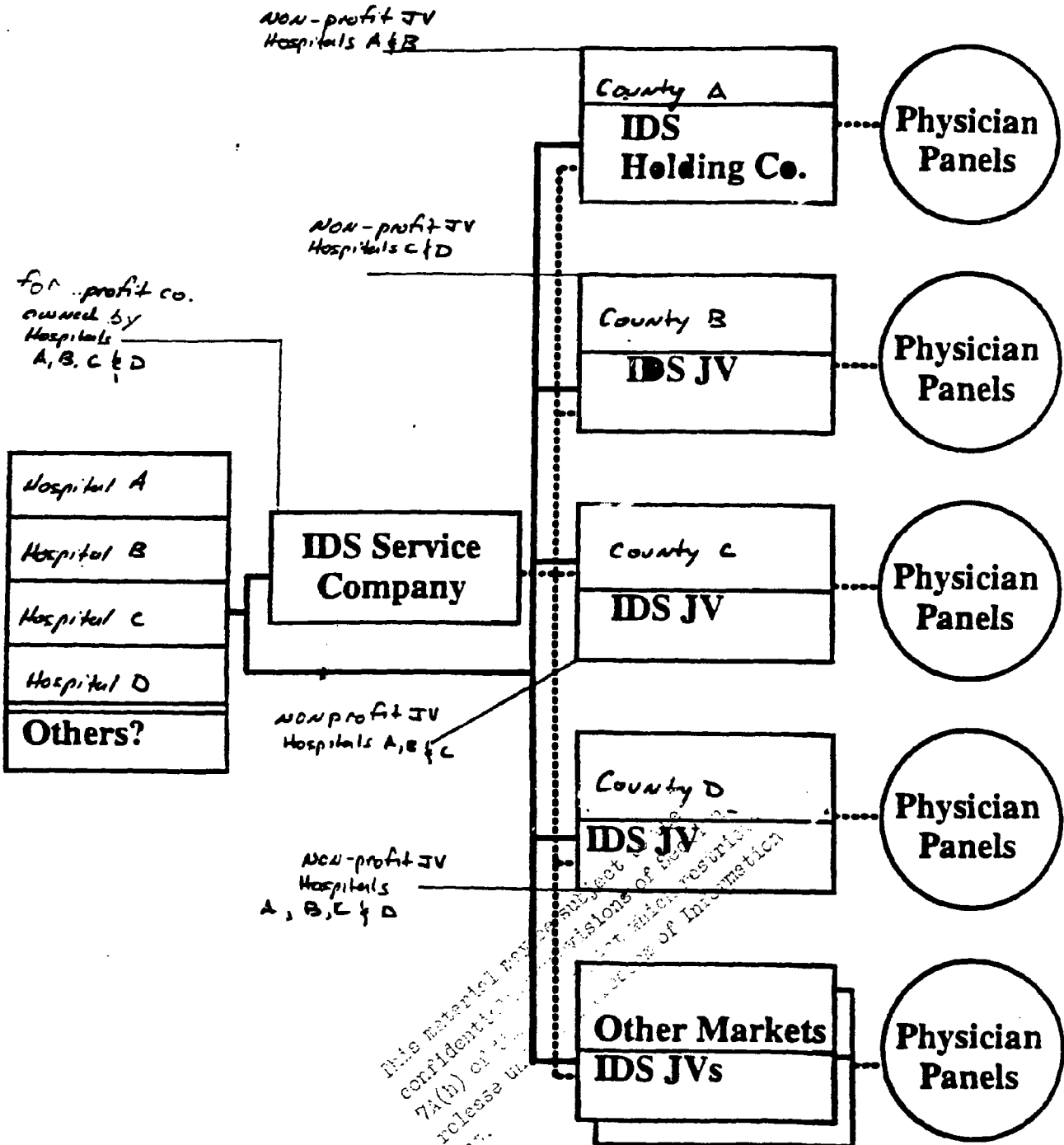
12/12/94 - Advised writer that the  
PMO office was in agreement with the conclusions  
reached in this letter based on the specific  
facts presented.

RBSmith

[REDACTED]

# IDS STATEWIDE NETWORK

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PHN Staff-

In the attached letter, four non-profit hospitals propose to establish a number of non-profit joint ventures which will qualify as non-profits under the IRS code. The forming non-profits will also create a for-profit corporation.

First, I believe the PHN office looks to the 802.40 exemption for the formation of non-profits. However, since the to-be-formed non-profits do not issue voting securities, 802.40's specific language makes it not applicable. We then look at whether their formation is reportable under 801.40 and, since no voting stock is coming back, conclude that no 801.40 filing is required.

Second, the formation of the for-profit corporation is covered by 801.40, to which the 802.20 minimum size test for the value of the less-than 50% of the joint ventures' voting stock coming back to each participant would be applicable.

Lastly, I do not think that the formation of the non-profits should in any way taint the formation of the for-profit joint venture (or vice versa) as long as the substance of the transactions is the formation of bona fide not-for-profit and for-profit corporations.

Please let me have your thoughts and comments.

Thanks,

*[Signature]*

cc: John Sipple