

BUYER BEWARE!
THE VALUE OF DUE DILIGENCE
IN HOSPITAL-PHYSICIAN
TRANSACTIONS

2013 AHLA Physicians and Physicians
Organization Law Institute

Presented by Judd Harwood & Lori Foley

Agenda

- I. Opening Remarks about Current Hospital – Physician Integration Efforts and the Evolving Role of Due Diligence
- II. Practical Diligence Issues for Current Collaboration Models
- III. Operational Considerations
- IV. Strategies for Resolving Uncovered Regulatory Problems
- V. Closing Remarks and Questions

Hospital – Physician Integration

- Changing care delivery and reimbursement models are resulting in increasingly innovative and complex collaborations between hospitals and physicians.
- Many of the collaboration models are designed to promote more efficient delivery of healthcare services, improve outcomes and better prepare for value-based payments.
- In many cases, collaboration has equaled consolidation and hospitals and health systems have acquired physician practices at a virtually unprecedented pace.

Hospital – Physician Integration

- No matter what integration model is selected, the due diligence process remains the first and most important step in evaluating the feasibility of an affiliation with a practice.
- The due diligence process is generally focused on the assets being acquired and the liabilities that may be assumed.
- Typical due diligence areas of inquiry include:
 - Organizational Matters
 - Litigation and Compliance with Laws
 - Financial Information
 - Properties and Equipment
 - Employment and Employee Benefit Matters
 - Contracts and Commitments
 - Insurance

Hospital – Physician Integration

- The goals of the traditional due diligence process are to:
 - Understand the nature of the assets that will be acquired and identify any logistical issues associated with the assets (i.e., identify contracts that require consent to assignment or liens that need to be satisfied).
 - Understand how the transaction will impact the practice and its patients.
 - Identify any potential exposure to legal, regulatory, financial or other matters that require the attention of the parties or may require an offset to the purchase price.
 - Attempt to quantify the potential risks to the acquiring hospital or health system.

Hospital – Physician Integration

- HOWEVER, it is no longer sufficient for a due diligence process to address only financial and legal considerations.
- The more complicated integration models require hospitals and health systems to evaluate practice compatibility, compensation models, cultures of compliance and information technology concerns.
- All of these factors should influence and help a hospital or health system determine if a physician or group of physicians fits within a organization's integration strategy.

Practical Diligence Issues

- **Practice Compatibility:**

- Acquiring a practice involves an evaluation of not only an organization's strategic and financial objectives, but must also take into account the practice's compatibility with the acquiring hospital or health system.
- The acquiring hospital or health system must be able to evaluate the following:
 - Will clinical outcomes and continuity of care improve as a result of the transaction?
 - Will the transaction allow the hospital to address a critical clinical or community need?
 - Do the physicians regularly work together as part of a coordinated care team or do they work in individual "silos?"
 - What are the reputations of the physicians? Are they considered "difficult" to work with? Has the acquiring hospital taken into account patient satisfaction surveys?

Practical Diligence Issues

- **Governance:**

- As part of the diligence process, the hospital will need to determine the appropriate governance model to use that will optimize the selected integration model.
- The governance model is key for driving cultural changes and may materially impact the hospital's or health system's ability to develop programs with payors.
- A hospital or health system will additionally need to define key governance requirements and identify areas of retained governance authority.

Practical Diligence Issues

- **Physician Compensation Model:**

- Physicians in private practice have historically been paid on a fee-for-service basis, which incentivizes individual productivity.
- New healthcare delivery models emphasize patient outcomes over physician productivity.
- Hospitals and health systems will need to evaluate a practice's compensation model in order to determine how the practice and its physicians fit within the organization's compensation model(s) and whether the physicians are open to change.
- The compensation model will be a key factor in aligning goals and incentives.

Practical Diligence Issues

- **Integration of Information Technology Systems:**

- Acquiring hospitals and health systems must engage in a thorough evaluation of the target's existing IT systems.
- The evaluation should include an assessment of the costs involved in consolidating multiple IT systems and a determination of whether the target's existing systems are interoperable with the existing IT infrastructure utilized by the hospital.
- If the hospital elects not to acquire the practice's existing IT infrastructure, the hospital must meet with each physician and develop a process for smoothing the transition onto the hospital's existing IT infrastructure.
- Hospitals will additionally need to gauge the willingness of the physicians to move onto a new IT infrastructure.

Practical Diligence Issues

- **Clinical Research:**

- Hospitals and health systems must engage in a thorough review of each physician's clinical trial and research activities.
- Hospitals and health systems should review the copy of the current institutional review board approval form along with the clinical trial agreement/research agreement.
- Hospitals will additionally need to confirm that the consent form is in compliance with the hospital's informed consent rules.
- The hospital should evaluate potential conflicts of interest and determine if the activities require the parties to make any disclosures to State or Federal Authorities (for example, reporting obligations pursuant to the Physician Payment Sunshine Act).
- Religious affiliated hospitals may additionally need to consider the impact of ethical or religious directives in evaluating the activities.

Practical Diligence Issues

- **Intellectual Property:**

- Physicians have developed unique clinical protocols and algorithms that hospitals and health systems are increasingly looking to acquire or license.
- In many instances, the intellectual property is perceived by the acquiring hospital or health system as a critical component to the organization's initiatives to reduce cost and improve quality of care.
- Assessing intangible value and evaluating the intellectual property is a complicated and time-consuming process.

Practical Diligence Issues

- **Antitrust Activity:**

- Hospital and physician consolidation efforts have attracted antitrust scrutiny from both federal and state enforcement agencies.
- On August 6, 2012, Renown Health, the largest provider of acute care services in Northern Nevada, announced a settlement with the FTC relating to its acquisition of two cardiology physician groups.
- The enforcement action against Renown was one of a number of successful challenges to proposed or consummated physician practice acquisitions within the last 24 months.
- Its important to note that none of the transactions were reportable HSR transactions. Many of the transactions were brought to the attention of the FTC and state attorney generals by third-party complainants such as commercial payors or competing healthcare providers.

Practical Diligence Issues

- **Excluded Parties:**

- Sections 1128 and 1156 of the Social Security Act grant the OIG the authority to exclude individuals and entities from Federally funded health care programs; the OIG maintains a list of all currently excluded individuals and entities called the List of Excluded Individuals and Entities (LEIE).
- No payment will be provided for any items or services furnished, ordered, or prescribed by an excluded individual or entity. This includes Medicare, Medicaid, and all other Federal plans and programs that provide health benefits funded directly or indirectly by the United States (other than the Federal Employees Health Benefits Plan).
- Anyone who hires an individual or entity on the LEIE may be subject to civil monetary penalties (CMP).

Practical Diligence Issues

- **Excluded Parties:**

- To avoid potential CMP and repayment of monies collected for services provided by an excluded party, hospitals must verify that none of the individuals they will be employing post-transaction are prohibited from billing Medicare/Medicaid or considered an excluded party.
- This verification can be outsourced to a third party or it can be handled via the following websites:
 - https://oig.hhs.gov/exclusions/exclusions_list.asp - shows HHS exclusions
 - www.sams.gov (replaced www.epls.gov in November 2012) – shows exclusions across the entire government
- At a minimum, verification should take place immediately prior to closing the transaction and then on a regular basis thereafter as part of the hospital's on-going compliance program.

Practical Diligence Issues

- **Compliance Activities:**

- It is critical for an acquiring hospital or health system to evaluate a practice's "culture of compliance" and its discipline around complying with state and federal healthcare laws and regulations.
- The diligence process will typically involve a review of the target practice's billing and coding process.
- The diligence process should additionally evaluate the programs in place to monitor compliance activities, including training and education for physicians and staff.
- Regardless of the form of transaction, the acquiring hospital or health system will need to know the practice's level of compliance in order to determine the level of pre- or post- transaction training for the staff and physicians.

Practical Diligence Issues

- **Problematic Compliance Areas:**

- We have identified a number of recurring areas of concern, including the following:
 - Billing and coding practices (incident-to billing, credit balances, overpayments, use of modifiers and site-of-service codes, etc.)
 - Payor audits
 - Compliance with HIPAA and the HITECH Act (Phoenix Cardiac Surgery, P.C. settlement)
 - Stark Law disclosure requirements for self-referrals of MRI, CT and PET
 - Relationship with referral sources including above market rents with referral sources or family members of referral sources
 - Supervision of procedures
 - Unsigned documents and expired leases

Operational Considerations

- **Practice Operations:**

- There are significant variances in how hospitals manage employed physicians – some allow the practice to continue operating as it was pre-acquisition whereas others intend to bring the practice into a formalized structure.
- Understanding the existing operations of the acquired practice are key in laying the foundation for a smoother integration.
- Some hospitals have identified an internal team to conduct these assessments whereas others outsource this diligence step. It helps for the assessment to be conducted by someone who understands the nuances of physician practice operations versus hospital processes.
- These findings may also be used as part of the practice valuation and fair market value opinion analysis since it provides insight into the practice's historical financial performance.

Operational Considerations

- **Practice Operations:**

- While it is unlikely the hospital will learn all of the nuances of the practice, it can generally learn:
 - The culture of the practice itself and not just that of the physicians participating in negotiations;
 - The degree of sophistication of staff and processes;
 - Areas where “quick wins” can be obtained that the practice will find beneficial;
 - Areas where immediate intervention and training are needed (compliance, financial controls, etc.); and
 - Potential roadblocks/hot topics that need to be addressed during pre-transaction discussions.
- Additionally, the parties may identify areas where it will be difficult for the parties to adhere to the negotiated agreement due to an inability to track/capture/report/monitor the data necessary to ensure contract compliance.

Operational Considerations

- **Billing and Collections:**

- A review of the existing billing and collections processes helps the hospital identify risk in the areas of compliance and financial controls while also identifying opportunities such as improved financial outcomes and employee education.
- Some hospitals plan to absorb these functions into a centralized business office (CBO) whereas others intend to leave them at the individual practice. This diligence step is key to understanding the logistics of each option with regards to the nuances of the specific practice being acquired.

Operational Considerations

- **Billing and Collections:**

- Specific areas that should be reviewed during the process include :
 - The process for collecting copayments and deductibles (inurement, carrier contract compliance);
 - If discounts are given to patients and how these are determined/monitored (compliance, financial results);
 - Whether balances from insurance are appropriately resolved (financial results, carrier contract compliance);
 - How the practice has historically pursued past-due patient responsible balances (Fair Credit Reporting Act, compliance, financial results); and
 - How credit balances are identified and resolved (compliance, repayment obligations).

Note: The American Taxpayer Relief Act of 2012 extends the period during which CMS may collect overpayments from providers and suppliers who are “without fault” from 3 years to 5 years.

Operational Considerations

- **Coding and Documentation:**

- Even if the hospital is not assuming the liabilities of the practice as part of the transaction, it can be exposed to financial risk from pre-transaction coding and documentation issues if, post-transaction, a provider goes under pre-payment review, recoupment, or becomes excluded from the Medicare/Medicaid programs.
- Risk areas vary by specialty.
- The OIG work plan should be reviewed in conjunction with a list of services provided by the practice to evaluate which services require review.
- Review of E/M services, surgical procedures, high-risk ancillary services such as PT, DME, etc. should be considered.
- A bell curve analysis of the provider’s E/M distribution compared to national data is helpful.
- A coding and documentation review is often performed supplemental to compensation discussions and fair market value opinion development when evaluating the validity of a provider’s Work Relative Value Units (wRVUs).

Operational Considerations

- **Coding and Documentation:**

- Review should include the documentation for selected visits along with the related charge capture form, claim form and explanation of benefits (EOB). Including these documents in the review may identify:
 - Code steerage (compliance);
 - Potential site of service, modifier, and unbundling issues (compliance);
 - How provider selected data is input into the system (financial control, compliance); and
 - Processes such as automatic re-filing of claims (compliance).
- Findings should be reported on a line item basis reflecting both incidence and financial error rates.
- Additional diligence should take place with regards to the occurrence and outcomes of any carrier audits, regardless of whether from government or commercial carriers.

Strategies for Resolving Uncovered Regulatory Problems

- What happens if an overpayment is discovered during the diligence process?
 - If an overpayment is identified, a Medicare provider has an obligation to return the funds to Medicare within 60 days after the overpayment has been identified.
 - If the provider fails to meet that 60-day deadline, the provider becomes liable for substantial penalties under the Federal False Claims Act and also risks exclusion from the Medicare program.
 - If the overpayment is somehow related to a financial relationship with a referring physician, the federal Stark Law and Anti-Kickback Statute could also be implicated.

Strategies for Resolving Uncovered Regulatory Problems

- What happens if a Stark law violation is discovered during the diligence process?
 - The Medicare self-referral disclosure protocol (SRDP) sets forth a process for providers to self-disclose actual or potential violations of the physician self-referral statute (Stark Law).
 - The SRDP cannot be used to obtain a CMS determination as to whether an actual or potential violation of the Stark Law occurred.
 - For disclosures involving relatively small amounts of money, the SRDP may not be an efficient way to resolve a Stark Law violation due to the lengthy and complicated nature of the process. Rather, the parties may find it would be more efficient to make a direct repayment to the Medicare contractor rather than pursuing the SRDP.

Strategies for Resolving Uncovered Regulatory Problems

- What happens if a Stark law violation is discovered during the diligence process?
 - The first resolved case through the SRDP involved Saints Medical Center.
 - The Center's alleged Stark Law violation reportedly concerned call coverage agreements/arrangements with physicians and medical directorships.
 - The issues were identified during preparation for a merger with another health system.
 - The matter was settled for \$578,000 but the liability reportedly could have been as high as \$14.5 million.
 - As of December 31, 2012, there have been only 15 reported settlements under the SRDP, and only 2 settlements were disclosed by physicians.

Strategies for Resolving Uncovered Regulatory Problems

- What happens if an Anti-Kickback Statute violation is discovered during the diligence process?
 - Since 1998, the OIG has maintained a Provider Self-Disclosure Protocol (SDP) that allows healthcare providers the opportunity to self-report potential fraud involving federal healthcare programs to the OIG.
 - In 2009, the OIG narrowed the SDP and indicated that the agency would no longer accept disclosures of matters involving Stark Law violations in the absence of a colorable anti-kickback violation.
 - The OIG has also announced a minimum settlement amount of \$50,000 for disclosures of Anti-Kickback Statute violations.
 - The OIG is currently soliciting suggestions for potential revisions to the SDP.

Strategies for Resolving Uncovered Regulatory Problems

- If self-disclosures or repayments are not an option, what options are left?
 - Escrow or holdback funds to address the compliance issue.
 - Ensure that the issue is carved out from any limitations on indemnification.
 - Ensure that the acquiring hospital or health system has a set-off right.
 - Require additional security or collateral to ensure that sufficient funds are available to address the matter.
 - Require a formal resolution of the issue prior to entering into arrangement.

**TEMPLATE LARGE PHYSICIAN PRACTICE ACQUISITION
DUE DILIGENCE INFORMATION REQUEST**

In connection with the proposed transaction under discussion, we would appreciate your assistance in locating and assembling the documents and other information described below for our review.

As you compile the information, please keep in mind the following:

1. Please organize your responses in accordance with the numbering on this list.
2. Unless the context indicates otherwise, the terms “contract” and “agreement” also include any obligation, commitment, understanding, or other arrangement, whether written or oral. If any contract or agreement has not been reduced to writing, please summarize the terms.
3. For all requested documents, please include copies of all amendments, supplements, waivers, exhibits, schedules, appendices and other attachments.
4. If a request is not applicable, or if the Company and its subsidiaries have no information responsive to a request, please so state. If information other than the type specifically requested would appear to fulfil the purpose of the request, please provide the information together with an explanation of how it relates to the request.

We also anticipate that, during the course of our due diligence review, we may need to review additional materials that this initial request does not describe and we intend to provide follow up requests as necessary.

If you have any questions or comments with respect to these requests, please contact [_____] at [_____] at [_____].

Thank you very much for your assistance in this matter.

**TEMPLATE LARGE PHYSICIAN PRACTICE DUE DILIGENCE REQUEST
[FOR ILLUSTRATION PURPOSES ONLY]**

| | | REQUEST | COMMENTS | STATUS |
|-----------|----|--|-----------------|---------------|
| A. | | ORGANIZATION AND GOVERNANCE | | |
| A. | 1. | Certificates of Incorporation, Articles of Organization, bylaws, operating agreements, limited liability company agreements, stockholder agreements, management agreements, and/or other governance documents of the Company, its subsidiaries or other entities in which such persons have an equity or other ownership interest. | | |
| A. | 2. | Certificates of good standing or existence from the Secretary of State or other appropriate state official with respect to the Company and its subsidiaries. | | |
| A. | 3. | Lists of the names of all equity holders of the Company and each of its subsidiaries and the number of shares or other rights of each class held by each such equity holder. | | |
| A. | 4. | Copy of resolutions and minutes for meetings of the Company's equity holders, its Governing Board, and its executive and other committees, for the past [_____] years. | | |
| A. | 6. | List of all trade names under which the Company operates. | | |
| A. | 7. | Organizational chart showing structure and ownership of all entities. | | |
| A. | 8. | Company organizational chart identifying management, department structure and activities of each department identified. | | |
| B. | | FINANCIAL INFORMATION | | |
| B. | 1. | The audited and unaudited financial statements (including interim financial statements) of the Company and each of its subsidiaries for the past [_____] years. | | |
| B. | 2. | All material correspondence to the Company from, or by the Company to, the Company's independent public accountants for the past[_____] years. | | |
| B. | 3. | Any audits, reports on internal controls or financial irregularities. | | |

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| B. | 4. | Schedule of all present indebtedness (short or long term) for borrowed money, capitalized leases, or purchase money financings, including name of creditor, nature of indebtedness, principal amount, interest rate, repayment schedule, and description of any limitations on optional prepayment. | | |
| B. | 5. | Bank letters or agreements confirming lines of credit for all outstanding obligations with the Company and its subsidiaries. | | |
| B. | 6. | All documents and agreements evidencing borrowings, whether secured or unsecured, by the Company and its subsidiaries that are currently outstanding, including loan and credit agreements, capital leases, promissory notes and other evidences of indebtedness and all guarantees with respect to which the Company or any equity holder is a party, beneficiary, surety, guarantor or maker. | | |
| B. | 7. | Schedule of aged accounts and notes receivable and accounts and notes payables of the Company and each of its subsidiaries at the end of the most recent month and at the end of the last [_____] quarters. | | |
| B. | 8. | All waivers or agreements canceling claims or rights of material value of the Company and its subsidiaries and any documents relating to any material write-downs or write-offs of notes or accounts receivable of the Company for the past [_____] years. | | |
| B. | 9. | State and federal payroll tax returns for the Company and each of its subsidiaries for the last [_____] years. | | |
| B. | 10. | Bank account numbers and statements for last [_____] months. | | |
| B. | 11. | Federal Employer Identification Numbers of Company and its subsidiaries. | | |
| C. | | OPERATIONS | | |
| C. | 1. | Clinic and ancillary operational statistics viewed by the Company for the current year and prior comparable year-to-date periods during the last [_____] years including, but not limited to, visits/encounters, wRVU, charges, and collections by provider and location. | | |
| C. | 2. | Provide quantity, gross charges and payments by CPT code/modifier for each provider (physician and mid levels) for the current year and for during the last [_____] years | | |
| C. | 3. | Provide patient name, date of service and all billing related information, such as insurance carrier, CPT, units, modifiers and diagnosis codes for each provider (physicians and mid levels) for the longer period of (i) year-to-date or (ii) last six | | |

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| | | months. <i>This information may be used to select a sample of patient records for review.</i> | | |
| C. | 4. | Provide total gross charges and the net revenue by payor or financial class (Medicare, Medicaid, Blue Cross and other Commercial Insurance and Self Pay) for the current year and the last [_____] years. | | |
| C. | 5. | <p>Please provide a summary description of the federal credit balance and overpayment practices, policies, procedures and experiences for the Company and its subsidiaries that address the following:</p> <ul style="list-style-type: none"> (i) How overpayments are identified and returned in a timely manner. (ii) The systems the Company has put in place to report routine federal credit balances accurately and on a timely basis. (iii) The process the Company uses to make credit balance repayments. | | |
| D. | | REAL ESTATE | | |
| D. | 1. | List of each parcel of real estate owned, including location, description, lot size, building square footage, date of purchase, and purchase price. Provide copies of the deed and title report on each parcel as well as any mortgages, deeds of trust, restrictive covenants and copies of any title exceptions. Provide copies of any real estate appraisals on such parcels and copies of all previously prepared environmental engineering surveys and inspections. | | |
| D. | 2. | Copies of leases covering all leased real property. Identify whether or not the leases are assignable. Identify the term of the lease, renewal options, automatic renewal provisions and options to purchase under each lease. | | |
| D. | 3. | Provide copies of all licenses, permits, certificates of occupancy, zoning letters and other governmental approvals relating to any owned or leased real property. | | |
| D. | 4. | Provide the name and address of local utilities servicing the owned and leased real property. | | |
| D. | 5. | A list of all “hazardous materials,” “hazardous substances” or “hazardous wastes” used or generated at any of the Company’s or any subsidiary’s facilities. | | |
| E. | | TANGIBLE AND INTANGIBLE PROPERTY | | |
| E. | 1. | Please provide a depreciation (with method for tax and book purposes) schedule showing cost, depreciation reserve, method used, recapture potential and recapture amounts, date acquired, current market and book value of tangible assets. | | |

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| E. | 2. | | Complete description of all equipment and vehicles which are owned and/or leased by the Company and/or its subsidiaries. | | |
| E. | 3. | | Copies of leases covering all leased assets and equipment. Identify whether or not the leases are assignable. Identify the term of the lease, renewal options, automatic renewal provisions and options to purchase under each lease. | | |
| E. | 4. | | List of all intellectual property rights to which the Company or its subsidiaries have rights, including without limitation trade names, trademarks and service marks (whether or not registered), copyrights (whether or not registered), patents, computer software, intellectual property licenses, domain name registrations, trade secrets (including customer and price lists and information). | | |
| E. | 5. | | For all software owned by the Company or its subsidiaries, provide the following, to the extent appropriate: the names of all persons who assisted in the design, development or implementation of such rights and their role in such design, development or implementation; the nature of each person's relationship to the Company or its subsidiaries (i.e., consultant, independent contractor, employee, etc.); whether each person signed a confidentiality, nondisclosure, invention assignment or other employment agreement, and if so, include a copy of such agreement. | | |
| E. | 6. | | Copies of any and all royalty, license, franchise, distribution, affiliation, transport, programming and similar agreements relating to the use of the Company's or its subsidiaries' intellectual property rights by third parties, or relating to the Company's or its subsidiaries' use of a third party's intellectual property rights. | | |
| E. | 7. | | Please provide a list of capital expenditures and dispositions for the Company and each subsidiary over the last [_____] years and a summary report of anticipated capital needs. | | |
| F. | | | CONTRACTUAL RELATIONSHIPS | | |
| F. | 1. | | To the extent not otherwise produced or requested elsewhere in this document, please provide copies of the following agreements (if applicable): | | |
| F. | 1. | a. | Employment agreements | | |
| F. | 1. | b. | Independent contractor agreements | | |
| F. | 1. | c. | Billing and collection agreements | | |
| F. | 1. | d. | Management agreements | | |
| F. | 1. | e. | Consulting Agreements | | |

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| F. | 1. | f. | All agreements restricting competition or soliciting of employees, patients or customers | | |
| F. | 1. | g. | Intellectual property license agreements (e.g., software licenses, trademark licenses, etc.) | | |
| F. | 1. | h. | Business associate agreements | | |
| F. | 1. | i. | Lease agreements (real property and equipment) | | |
| F. | 1. | j. | Data entry or data processing agreements | | |
| F. | 1. | k. | Recruitment agreements | | |
| F. | 1. | l. | Service and maintenance agreements | | |
| F. | 1. | m. | Medical director agreements | | |
| F. | 1. | n. | Clinical research agreements | | |
| F. | 1. | o. | All standards agreements which employees are required to sign (e.g., confidentiality agreements, work for hire, conflict of interest declarations, etc.) | | |
| F. | 2. | | Please provide copies of all payor agreements, managed care agreements, third-party administrator agreements, provider network agreements and description of affiliation relationships with other healthcare providers and service agencies. | | |
| F. | 3. | | Please provide copies of any agreements with referral sources, including physicians and other medical professionals; copies of agreements with hospitals and other healthcare providers (e.g., ambulatory surgery centers, diagnostic imaging centers, nursing homes, etc.), such as medical director agreements or consulting agreements. | | |
| F. | 4. | | Please provide copies of any agreements relating to any completed (within the past [_____] years) or proposed reorganizations, acquisitions, mergers, or purchases or sales of assets. | | |
| F. | 5. | | To the extent not otherwise produced or requested elsewhere in this document, please provide copies of any shared savings agreements, accountable care organization participation agreements or similar agreements that establish mechanisms for sharing a portion of savings as a result of a reduction in the cost of health care services. | | |
| H. | | | INSURANCE | | |

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| H. | 1. | Summary report of insurance currently in force, including names of carriers, agents, amounts of coverage and premiums, description of coverages (fire, casualty, product liability, professional liability, business interruption, key man life insurance, etc.) and expiration dates. | | |
| H. | 2. | Please provide copies of actual policies and binders. | | |
| H. | 3. | Summary report of claims experience for past [_____] years under each policy. | | |
| H. | 4. | Summary report detailing the extent to which the Company is self-insured (if applicable). | | |
| H. | 5. | Please provide a list of any potential or open insured claims against the Company, its subsidiaries and any of their respective physicians, employees or contractors, including the name of the claimant, description and status of the claim, the date of the claim and any reserve against the claim. | | |
| I. | | GOVERNMENTAL REGULATION | | |
| I. | 1. | A list and a copy of all licenses, permits, certificates, authorizations, registrations, concessions, approvals, exemptions and other operating authorities from all federal, state and local regulatory authorities and a description of any pending, contemplated or threatened changes in the foregoing, and a description of any pending or threatened proceedings or investigations before any court or any regulatory authority regarding the foregoing. | | |
| I. | 2. | Copies of any corporate integrity agreements, consent decrees or orders (including applicable injunctions) to which the Company or any subsidiary is a party. | | |
| I. | 3. | Copies of all files, records and correspondence pertaining to governmental investigations, requests for information, subpoenas, audits, etc. Please describe any self-disclosures made by the Company or any subsidiary to governmental authorities addressing overpayments received from federal healthcare programs as well as other potential regulatory issues. | | |
| I. | 4. | List and describe each pending or threatened claim, enforcement action or investigation by any governmental agency with respect to compliance with law, the terms of any license or which might have an effect on the Company's or any subsidiary's operations or assets, including copies of correspondence, if applicable. | | |
| I. | 5. | Copies of all certificates of need and related documentation, including CONs currently in effect and pending applications. | | |
| I. | 6. | Copies of complaints made by any private person or third-party regarding alleged violations of law or alleged noncompliance with any licenses. | | |

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| I. | 7. | | Please provide a copy of any compliance program materials, policies or procedures. Provide a summary report of all compliance auditing and monitoring protocols, including hotline and investigation protocols. | | |
| I. | 8. | | Description of compliance auditing activity (internal and external audits) and any adverse findings wherein a repayment in excess of \$10,000 was made, or should have been made. | | |
| I. | 9. | | Copies of all policies and procedures in relation to HIPAA and any similar federal, state or local privacy laws and regulations. | | |
| I. | 10. | | Description of any investigations by any governmental entity for a violation of any information privacy or security laws, including, without limitation, any notices from OCR or DOJ alleging any such violation | | |
| I. | 11. | | Copies of all other data on regulatory compliance including environmental control and employee safety compliance, problems, potential violations, expenditures, etc. | | |
| I. | 12. | | A description of any circumstances where the Company or any of its subsidiaries receives any free or discounted goods or services from any vendors or other health care entities. | | |
| J. | | | LITIGATION | | |
| J. | 1. | | List of all litigation, arbitration and government proceedings relating to the Company and/or its subsidiaries which might have an effect on their operations or assets to which the Company and/or its subsidiaries or any of their respective equity holders, directors, officers, managers, employees or contractors is or has been a party, or which is threatened against any of them, indicating the name of the court, agency or other body before whom pending, date instituted, amount involved and current status. | | |
| J. | 2. | | List and give a brief description of any pending or threatened claim or litigation involving alleged violations of laws or regulations regarding equal employment opportunity or the health or safety of employees or others or other governmental or administrative proceedings which might have an effect on the Company's or any subsidiary's operations or assets. | | |
| J. | 3. | | Brief description of any outstanding judgments, orders settlements and releases to which the Company or any subsidiary is subject. | | |
| J. | 4. | | Information as to any past or present federal, state, local or foreign governmental investigation of or proceeding involving the Company or the Company's subsidiaries, equity holders, directors, officers, employees or contractors which might have an effect on the Company's operations or assets. | | |

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| J. | 5. | | Copies of all attorneys' responses to audit inquiries for the past [_____] years. | | |
| K. | | | EMPLOYEES AND BENEFITS | | |
| K. | 1. | | A current list of individuals employed in connection with the operations of the Company and its subsidiaries. For each employee please indicate the following: | | |
| K. | 1. | a. | Name, gender and date of birth | | |
| K. | 1. | b. | Date of hire | | |
| K. | 1. | c. | Job title | | |
| K. | 1. | d. | FLSA status | | |
| K. | 1. | e. | Current compensation rate (hourly and annually) and bonus targets (if applicable) | | |
| K. | 1. | f. | Level of employee benefits and any other fringe benefits | | |
| K. | 1. | g. | Immigration status (for employees who are not citizens or resident aliens of the United States, please provide copies of such person's I-9 Form and I-94 Arrival/Departure Card). | | |
| K. | 2. | | For all physicians, nurse practitioners and physician assistants employed by the Company or any subsidiary, please provide individuals specialty, board certifications, years in practice, hospital privileges and provider numbers and NPIs. | | |
| K. | 3. | | Please provide copies of all employee handbooks, statement or employment policies, including working hours, overtime pay, workers' compensation, unemployment compensation, vacation and sick pay, emergency leave, relocation, bonus, etc. Please provide a copy of the agreement(s) establishing the physician compensation/incentive model utilized by the Company and or any subsidiary and a summary description of the compensation/incentive model. | | |
| K. | 4. | | Please provide a summary of any labor disputes, union organizing activities, EEOC claims, OSHA claims, immigration matters relating to the Company, its subsidiaries or their respective employees. Additionally, please identify any and all complaint or lawsuits filed against the Company or any subsidiary within the last three (3) years. Please include charges, audits, arbitrations or other proceedings ordered by federal, state, or local agencies with copies of the court's ruling (or status) for each. | | |
| K. | 5. | | Projected payroll for the Company and each subsidiary, broken out by workers compensation class code and state for the coming year. | | |

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| K. | 6. | | Employee turnover information for the last [_____] years showing voluntary and involuntary terminations. | | |
| K. | 7. | | List of employees on VISA and their current status including if company is sponsoring for permanent residency, etc. | | |
| K. | 8. | | Copies of all pension and profit-sharing plans (and agreements) and other employee benefit plans, including bonus plans, stock purchase or bonus plans or arrangements, option plans, group or key man life insurance plans, salary continuation plans, supplemental unemployment benefit plans, medical insurance or reimbursement plans, etc., and any amendments or proposed amendments to any such plans, and all other direct or deferred compensation plans, together with the following documents: | | |
| K. | 8. | a. | All applicable trust agreements and/or service contracts for the foregoing plans. | | |
| K. | 8. | b. | Latest IRS forms for the foregoing qualified plans, including all annual reports, schedules and attachments, and any correspondence with the IRS or PBGC regarding the plans. | | |
| K. | 8. | c. | Latest copies of all summary plan descriptions, including modifications, along with any booklets for the foregoing plans. | | |
| K. | 8. | d. | Expense history related to these plans, including projected benefits obligation. | | |
| K. | 8. | e. | Schedule of fund assets and unfunded liabilities under applicable plans. | | |
| K. | 8. | f. | Claims paid and incurred report for past [_____] years for the foregoing plans by individual. | | |
| K. | 8. | g. | By plan, total cost and company cost for medical, dental, life and long term disability plans for the last [_____] plan years by month with corresponding enrollment. | | |
| K. | 8. | h. | Claims paid and incurred report for past [_____] years for the foregoing plans by individual. | | |
| K. | 8. | i. | Schedule of employee cost charge by coverage category and number of employees eligible, but not electing health or dental coverage. | | |
| K. | 8. | j. | List of individuals currently on COBRA, and for each indicate the date COBRA coverage began and when it is projected to end, along with information on which individuals are receiving the premium subsidy (and the beginning and end dates of such subsidy). | | |

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| K. | 9. | Schedule of all reserves, broken down by category, for each self-funded benefit. For deferred benefits, such as vacation pay and medical reimbursement, show dollar reserves; for non-cash reserves, such as sick leave, show potential hours of time off. | | |
| L. | | TAX MATTERS | | |
| L. | 1. | Copies of any federal, state or local returns (including information returns) for the latest closed year and all open years for Company and its subsidiaries (including all employment tax returns). | | |
| L. | 2. | Copies of all 1099s, W-2s and K-1s issued for the latest closed year and all open years for Company and its subsidiaries. | | |
| L. | 3. | Current and pending audit and revenue agent's reports for the Company and its subsidiaries; protests filed by the Company and its subsidiaries. | | |
| L. | 4. | Tax settlement documents and correspondence for the past three years involving the Company, its subsidiaries and any equity holder of the Company relating to disputes in excess of \$10,000. | | |
| L. | 5. | Any agreements waiving statute of limitations or extending time involving the Company and/or its subsidiaries. | | |
| L. | 6. | Description of accrued federal, state and local withholding taxes and FICA for the Company and/or subsidiaries. Please identify the entity to which such relates. | | |
| L. | 7. | List of all state, local and foreign jurisdictions in which the Company and its subsidiary pays or files taxes or collects sales taxes from its customers. Please identify the entity(s) to which such relate. | | |
| L. | 8. | An analysis of the current and deferred tax provision and liability accounts for the last [_____] fiscal years and the most recent interim period, including a summary of book/tax timing differences, a reconciliation of the tax provision from the statutory rate to the effective rate, and a reconciliation of the tax provision to the tax returns. | | |
| L. | 9. | A description of the reserves for contingent liabilities, including any tax contingency reserves including penalties and interest to the extent not provided above and any completed or preliminary FIN48 analysis which has been performed. | | |
| M. | | RESEARCH | | |
| M. | 1. | Contracts pertaining to research and development activities of the equity holders, the Company or any subsidiary. For any research activities, please provide the following information: | | |

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| M. | 1. | a. | Name and summary description of research study | | |
| M. | 1. | b. | Sponsor of the research study | | |
| M. | 1. | c. | Name, email and phone number for sponsor's research contact person | | |
| M. | 1. | d. | IRB of record for study | | |
| M. | 1. | e. | Number of patients currently enrolled (even if study closed for enrollment but open for longitudinal measures) | | |
| M. | 1. | f. | Credentials of any individual within the Company who manages research data | | |
| M. | 1. | g. | Explanation how the Company captures the research data | | |
| N. | | | INFORMATION SYSTEMS | | |
| N. | 1. | | Please provide an inventory of computer and network systems. | | |
| N. | 2. | | Please provide a list of all software utilized by the practice. | | |
| N. | 3. | | Please provide a list of all electronic media and interfaces. | | |
| N. | 4. | | Please provide a list of all outsourced/third party hosted software and/or data arrangements. | | |

Due Diligence Checklist | Operations

Hospitals and physicians are continuously seeking ways to strategically align themselves in an effort to be more effective and efficient at providing high-quality patient care.

One such alignment strategy is the “buy and employ” model, whereby hospitals acquire physician practices and employ the physician(s). As such, attorneys, certified public accountants, and healthcare consultants are often called upon to provide “**buyer’s side**” due diligence services for purposes of identifying and minimizing risk associated with these transactions.

BUYER’S SIDE DUE DILIGENCE | Buyer’s side due diligence is generally focused on the assets being acquired and liabilities assumed—including those not directly reflected on the balance sheet. Additionally, some level of due diligence regarding practice operations is also helpful for purposes of identifying future operating risks and/or opportunities for improvement.

THE CHECKLIST | The checklist below addresses many of the due diligence issues that should be considered in connection with a physician practice acquisition related to operations and coding compliance. The nature of the transaction will determine the depth and scope of the diligence process related to these areas.

1. Revenues

- Risk factors generally include: overstated revenues due to inaccurate or inappropriate coding (e.g. overcharging or up-coding practices), high dependence on a limited number of referral sources, high dependence on a small number of providers, capacity constraints, and declining reimbursement rates.
- Analyze practice revenue over a relevant period of time and compare to appropriate benchmark data for reasonableness. Depending upon the type of practice, such revenue metrics may include:
 - o Net revenue per physician/provider
 - o Net revenue per procedure/encounter
- Obtain a listing of total procedure volume by CPT code over a relevant period of time and compare the distribution of procedure codes to appropriate benchmark data for reasonableness.
- Analyze revenue by specific provider to determine whether a disproportionate amount is being generated by a relatively small number of physicians.
- Determine age and expected future work life of each physician.
- Consider capacity constraints that could limit the practice’s ability to grow. Examples of capacity constraints include: space limitations, equipment being utilized near capacity, and the number of providers in the practice.
- Determine if the practice has significant ancillary revenue.
 - o If such ancillary revenue exists, obtain details by type of service over a relevant period of time.
 - o Determine certificate of need and li-censure requirements, if any, in connection with ancillary revenue sources.

2. Operating Expenses

- Compare operating expenses, in total and by major category, over time and against appropriate benchmark data. Substantial variances and/or unusual trends should be investigated.
- Review employment agreements with physicians and summarize relevant terms including compensation arrangements.
- Analyze physician compensation and compare to relevant benchmark data based on productivity metrics such as: net collections per physician and/or work relative value units (wRVUs) per physician. Significant variances should be explained.

Due Diligence Checklist | Operations

3. Payor Mix

- Determine the practice's payor mix over a relevant period of time and evaluate for reasonableness under the circumstances.
- The payor mix should be determined based on the relative percentage of gross charges attributable to each type of payor such as: Medicare, Medicaid, commercial insurance carriers, and self-pay patients.

4. Patient Charts

- Some physician practices (such as family medicine) will have recurring patients whereas others (such as general surgery) may not.
- If applicable, determine the number of active patients currently and over a relevant period of time. *Note: The definition of an active patient will vary by specialty.*

5. Practice Environment

- Assess the culture of the practice including the degree of sophistication of processes and staff. How do existing processes compare to expectations?
- Identify areas where immediate intervention and training are needed to improve financial controls and corporate compliance.
- Identify potential roadblocks or hot topics that need to be addressed during pre-transaction discussions and possibly included in the transaction documents.

6. Billing & Collections

- Review existing billing and collections processes to identify risk in the areas of compliance and financial controls while also identifying opportunities such as improved financial outcomes.
- Review specific areas including
 - The process for collecting copayments and deductibles. Are they routinely waived?
 - How credit balances are identified and resolved.
 - Whether unpaid claims are appropriately worked.
 - How the practice has historically pursued past-due patient responsible balances.
 - Whether discounts are given to patients and how these are determined and monitored.

7. Coding and Documentation

- Review the services provided by the practice in conjunction with the OIG work plan to evaluate which services require review.
- In addition to medical record documentation, also review the following
 - Charge capture form for code steerage
 - Claim form for potential site-of-service, modifier and unbundling issues
 - Explanation of Benefits (EOBs) for unbundling or other compliance issues and evidence of automatic refilling of claims.