

# Add-On Diligence Strategy in Health Care

Enhancing the Value of Growing Private Equity Platform  
Companies via Proactive Compliance Initiatives

October 9, 2018

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# Presented by

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# Agenda

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1. Platform vs. Add-On
2. Health Regulatory Diligence Remains Important
3. Key Areas of Focus
4. Keys to Effective “Right-Sized” Diligence
5. Addressing Identified Risks

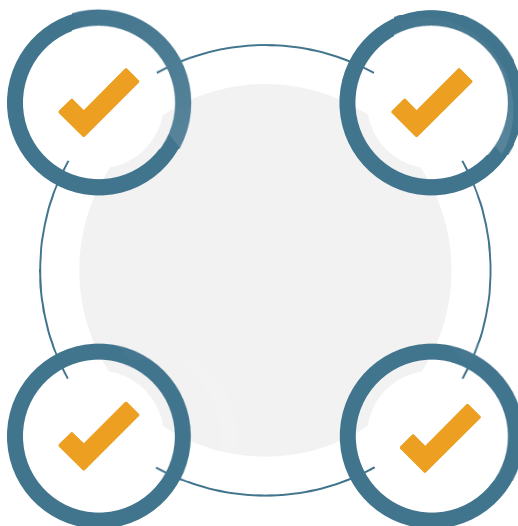
# Platform vs. Add-On

## Scale

Add-on transactions are smaller, but more frequent/numerous

## Scope

Focus must be on true “red flags” – add-ons unlikely to change existing culture/structures of platform



## Speed

Add-ons are typically more accelerated – urgency to grow

## Approach

Smaller teams, focused diligence, form documents = efficient, effective diligence

# Health Regulatory Diligence Remains Important

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- Successor Liability: Asset vs. Stock/Merger transactions.

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- Provider Numbers
  - How important is the AR?
  - Government may not care that you have a new number.

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- Customer base/brand/patient relationships – what do you lose with a new brand?

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- New entity culture – if they were doing it wrong before, they will continue after.

# Health Regulatory Diligence Remains Important (cont'd)



## ■ Exit Strategy/Liquidity Events

- Investors/buyers will want to understand diligence
- Uniform/robust process encourages confidence, bolsters pricing
- No surprises during sell-side diligence



## ■ Patient Care/Brand Protection/Sustainability of Revenues

- Buying a bad name for yourself
- Impact on future revenues



## ■ Unknown Unknowns – Mitigating the Risks

- Deal structures limit liability
- Form documents protect against the unforeseen

# Key Areas of Focus

## Essential “Red Flag” liability areas

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- **Billing and Coding**
  - Focused review of known industry billing and coding issues
- **Fraud and Abuse: Stark, Anti-kickback and CMP laws**
  - “How do you get patients?”
  - Documentation and fair market value reports
  - Patient and employee complaints (whistleblower risk)
- **Key Industry Fraud/Reimbursement Risks** (e.g., pediatric Medicaid in the dental space)
- **Corporate practice of medicine/dentistry**
- **HIPAA, Privacy and Security**



# Keys to Effective “Right-Sized” Diligence



- ✓ **▪ Focused, knowledgeable team**
  - “trusted advisors”
  - Know organizational goals, priorities, budgetary and timing goals
- ✓ **▪ Familiarity with industry/business risks and pitfalls**
- ✓ **▪ Focused document and information requests – red flags**
- ✓ **▪ Form documents that address unknown unknowns with catch-all indemnities “safety net”**
- ✓ **▪ Acquisition structures that inherently limit liability**

# Addressing Identified Risks



- Deal Structure – Asset vs. Stock Deal
- Common Post-Closing Protections:
  - Indemnification
    - Escrows
    - Holdbacks
  - Reps & Warranty Insurance
  - NOTE: Difficulty of Recovery Against Former Sellers Who May Now Be Employees

# Addressing Identified Risks (cont'd)

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▼  
**Fair Market Value  
& Commercial  
Reasonableness  
Reports**

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**Self-Disclosures**

▼  
**Know When to  
Walk Away**

# Questions?

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# Upcoming Webinars

## Proactive Compliance Initiatives for Private Equity Platform Companies Webinar Series

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- **Proactive Employment Compliance (Part 3)**  
When: October 16, 2018 at 12:00pm – 12:45pm  
People: Denise Dadika, Paul DeCamp, Peter Steinmeyer
- **Proactive Health Care Regulatory Compliance (Part 4)**  
When: October 23, 2018 at 12:00pm – 12:45pm  
People: John Eriksen, Josh Freemire, Kevin Ryan
- **Employee Benefits and Executive Compensation Compliance and Planning (Part 5)**  
When: October 30, 2018 at 12:00pm – 12:45pm  
People: Christopher McMican, Kevin Ryan, Peter Steinmeyer

**Registration is complimentary. For additional details, visit [www.ebglaw.com/events](http://www.ebglaw.com/events).**