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Post-Acute Care Deals: From Diligence to Closing

Transacting in the Post-Acute Care Space Crash Course

November 21, 2017

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Agenda

- Pre-Acquisition
  - Why Post-Acute Care (“PAC”)?
  - Target Screening
- Transaction Due Diligence
  - Federal Fraud & Abuse Laws
  - Regulatory “Red Flags”
- Closing the Deal
  - State Law Issues
  - Government Payors

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Pre-Acquisition

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Why Post-Acute Care ("PAC")?

- Market Fragmentation
  - Effects:
    - Poor coordination of care
    - Higher re-admission rates
    - Sub-optimal patient outcomes
  - Opportunities for consolidation and scale
  - Integrated continuum of post-acute care
- Changing Landscape of Post-Acute Care
  - Increase in PAC utilization
  - New payment models

12,313 HHAs

15,263 SNFs

1,188 IRFs

427 LTACHs

Source: MedPAC

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Target Screening

Key Evaluation Criteria for PACs

- Leadership: Is the existing leadership/management committed to success?
  - Especially important for those new to the PAC industry
- Quality & Performance: Does the PAC demonstrate long term, systemic success in the field?
  - Commitment to value-based care
  - Using data to guide improvement (e.g., re-admissions, length of stay)
  - Care transitions
- Sustainability: Is there a finance model in place that is sustainable, or better yet, profitable?
- Flexibility: Able to adapt to the ever-changing healthcare reimbursement landscape?

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Transaction Due Diligence

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Federal Fraud & Abuse Laws

- The Anti-Kickback Statute (42 USC 1320a-7b(b))
  - Prohibits accepting, offering, paying, or receiving anything of value to induce or reward referrals or generate federal health care program business
- The Stark Law (42 USC 1395nn)
  - Prohibits self-interested referrals from a physician to a health care entity that result in a claim to reimbursement to a federal health care program for certain designated health services
- False Claims Act (31 USC 3729)
  - Prohibits knowingly submitting, or causing another to submit, a false claim to the government or failing to pay an overpayment back to the government
- Civil Monetary Penalties Law (42 USC 1320a-7a)
  - Imposes civil money penalties for various forms of fraud and abuse involving the Medicare and Medicaid programs

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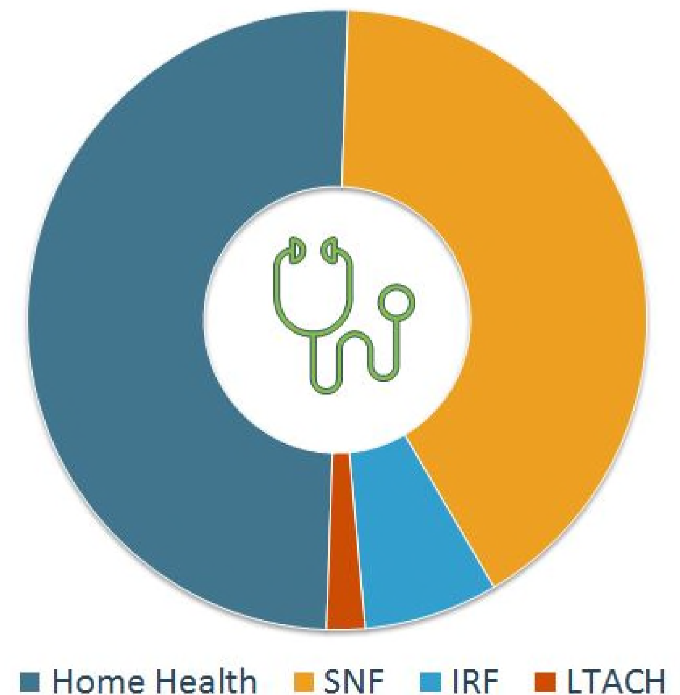
Regulatory "Red Flags"

- Referral Relationships
  - Red Flag: Compensation structures that are linked to the volume or value of patients or referrals
  - Red Flag: Agreements that obligate the parties to refer to one another
- Discounts and Swapping
  - Red Flag: Offering higher discounts to providers who are better situated to refer patients
- Marketing Practices and Materials
  - Red Flag: Marketing that specifically targets Medicare/Medicaid beneficiaries
  - Red Flag: Percentage-based compensation arrangements for marketers



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Improper Billing Practices

- Examples of Improper Billing Practices:
  - Billing for medically unnecessary services
  - Billing for services that were not rendered
  - Upcoding: claims that are improperly coded to overstate the severity of the patients' conditions, resulting in overpayments
- Improper Billing Practices Specific to HHAs:
  - Wrongfully certifying patients as homebound
  - Claims submitted for services that inappropriately overlapped with claims for inpatient hospital stays
  - Billing for services on dates after patients' deaths
- Red Flag: Poor compliance program and/or written compliance policies

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Closing the Deal

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State Law Issues & Government Payors

- Licensing
  - Will the transaction trigger any licensing requirements?
    - For states that require Certificates of Need for PACs, determine what will be required of new owners
- Corporate Practice of Medicine ("CPOM")
  - If the transaction is occurring in a state that prohibits CPOM, identify a compliant post-closing legal structure
    - "Friendly PC" arrangements trigger certain additional regulatory concerns
- Change of Ownership ("CHOW") Requirements
  - Medicare: providers undergoing a CHOW are required to transfer Medicare Identification number and provider agreement, or complete a re-enrollment
  - Medicaid: state-by-state

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Questions?

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Upcoming Webinars

Transacting in the Post-Acute Care Space Crash Course Series

- **Post-Acute Preferred Provider Arrangements—Strategies for Partnership**
  Tuesday, November 28 at 2:00 – 2:15 p.m. ET
  Presenter: Clifford E. Barnes

To register, please visit: http://www.ebglaw.com/events/

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