



Congratulations on that New Acquisition! *Compliance Lessons Learned the Hard Way*

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Announced Hospital Mergers & Acquisitions, 1998-2015



Source: Irving Levin Associates, Inc. (2016). The Health Care Services Acquisition Report, Twenty-Second Edition.
⁽¹⁾ In 2004, the privatization of Select Medical Corp., an operator of long-term and acute-care hospitals, and divestiture of hospitals by Tenet Healthcare Corporation helped to increase the number of hospitals affected.
⁽²⁾ In 2006, the privatization of Hospital Corporation of America, Inc. affected 175 acute-care hospitals. The acquisition was the largest health care transaction ever announced.
⁽³⁾ In 2013, consolidation of several investor-owned systems resulted in a large number of hospitals involved in acquisition activity. Chart 2.10 in 2009 and earlier years' Chartbooks.

Agenda

- Overview of Cleveland Clinic Health System and Compliance structure
- Compliance reporting lines and its relevance to acquisitions
- How Compliance can add value in the due diligence process
- Recommendations for a compliance-focused due diligence

Disclaimers

- We are not lawyers!
- We don't have all the answers
- We will share what we've learned through experience
- We will ask you to share your experience

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Cleveland Clinic Health System



- 7.1M Outpatient Visits
- 161,664 Acute Admissions
- 3,584 Physicians & Scientists
- 51,487 Employed Caregivers
- 28.5M sq. ft. Facility Space
- 10 Regional Hospitals
- 150+ Northern Ohio Outpatient Locations
- Staff physicians are salaried; on one year contracts

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National & International Locations



- Canada – Executive Health, Sports Health and Rehabilitation
- Nevada – Lou Ruvo Center for Brain Health, Glickman Urological & Kidney Institute
- Florida – Integrated Medical Campus in Weston; Outpatient Locations in West Palm Beach
- Abu Dhabi - Partnership with Mubadala Development Co.
- London – In Progress

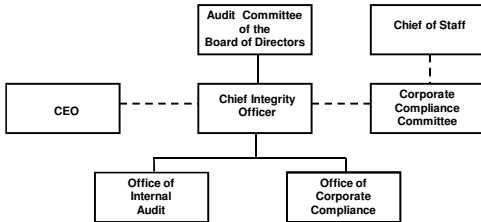
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Cleveland Clinic Health System

- Chief Integrity Officer serves as the Clinic's Compliance Officer
- Positioned in the C-suite
- Collaborative, but independent relationship with Chief Legal Officer, Chief Financial Officer
- Oversees Compliance & Internal Audit

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Chief Integrity Officer Reporting Lines



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Reporting Lines Are Relevant to New Acquisitions

- Due diligence process is typically led by attorneys
- In some entities, the Compliance Officer reports to the Legal Officer
- The Legal Officer, Compliance Officer and Privacy Official may be one and the same person
- What difference does it make?

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Complimentary but Different Roles

- **Legal Department**
 - Zealously defend & protect the entity's interests
 - Assists in defining & establishing standards
 - Give sound legal advice
 - Generates documentation that is protected from disclosure
- **Compliance Department**
 - Zealously prevents, detects & remedies misconduct
 - Supports a culture of accountability and integrity
 - Advises "Do the Right Thing"
 - Generates documentation that may be disclosed
 - Independent

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The Whole Truth (Compliance)



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The Truth (Legal)



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Assumption Traps

- Compliance should not assume that the legal team will evaluate all compliance topics & documents during due diligence
- The legal team should not assume they know all compliance topics & documents to evaluate during due diligence

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Why Compliance & Audit Need to be Part of Due Diligence

- Assess internal controls and their effectiveness
- Evaluate effectiveness of the target entity's compliance program
- Identify potential barriers that could delay integration
- Determine compliance with HIPAA Privacy & Security Rules
- Prioritize post-acquisition plans

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What Can Go Wrong?

- 60 Day Rule
- Successor liability
- Incompatibility of billing and other systems
- Preparedness for unannounced surveys and audits in the immediate post-acquisition phase

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Compliance Due Diligence

- **Compliance Officer to Compliance Officer interview**
- **Documents to review:**
 - Code of Conduct
 - Compliance hotline data & trends (incl. no. anonymous reports)
 - Compliance Committee composition, minutes, agendas
 - Deficit Reduction Act (Employee Handbook, False Claims Act materials)

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Compliance Due Diligence

- **Documents to review (cont'd)**
 - Training completion rates (FWA, Privacy, Security Awareness)
 - Government audits, reviews and investigations (OIG, FDA, OCR)
 - Results of coding audits
 - PEPPER reports
 - Summary of overpayments that have been returned (and timeliness of repayment)

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Compliance Due Diligence

- **Documents to review (cont'd)**
 - Exclusion screening
 - Enforcement of disciplinary policies (for all position levels)
 - Policies and procedures
 - Claims
 - Privacy & security
 - Teaching & supervision
 - Security risk analysis and risk management
 - Business Associate Agreements

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Compliance Due Diligence

- Documents to review (cont'd)
 - Documentation of IRB or Privacy Board waivers, Data Use Agreements
 - Breach reports to HHS
 - Breach risk assessments
 - Medical record requests & turn-around times
 - ACO compliance program documentation
 - Process & procedures for claims
 - Procedures for supervision

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Integration Priorities

- Code of Conduct
- Promote compliance Help Lines/Hotlines
- Any impending regulatory deadlines
- Coding/billing reviews
- Remediate any issues

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Integration Priorities (cont'd)

- Compliance Committee & related documentation
- Coding compliance
- Risk Assessment (general compliance & HIPAA)
- Re-evaluate covered entity status (including affiliated entities, OHCAs etc.)

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Start Early

- Consult with Legal at Letter of Intent (LOI) stage or earlier
- Provide LOI "wish list" (document review, access to people/info)
- Share concerns; seek advice
- Ask about successor liability

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Questions?

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Cleveland Clinic

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