Compliance Implications in Due Diligence  
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Overview of Regulatory Compliance DD Process

- Document Request/Review
- State Law Requirements
- Interview
- Follow-ups
- Report
- Address Recommendations
- Integration

Elements of a Compliance/Regulatory Document Request

- Compliance Program
  - Plan/Code of Conduct
  - Committee Minutes
  - Work plan
  - Policies
  - Training
  - Hotline/Reporting documentation
  - Exclusion checks
  - Licensing/Permits
- HIPAA Policies
- Enforcement Actions/Surveys
- Audit Program
- Billing/Coding Review
- Physician relationships
- Marketing/Promotion
- Industry specific requests
Key Issues in the Compliance Diligence Process

- Objective Indicia of a Compliance Program
- Culture of Compliance
- Red Flags
- Recommendations
  - Pre-closing
  - Post-closing
  - Integration

Objective Indicia of a Compliance Program

- Code of Conduct
- Policies and procedures (covers a wide range of topics)
- Evidence of Training
- Logs/Evidence of Reporting
- Meeting Minutes
- Other documents related to the Compliance Program

Is there a “Culture of Compliance”?

- History of Compliance Program
- Training/certification of compliance officer
- More than just HR/Risk Management/Accreditation
- Committee (structure/functioning/history/make-up)
- Awareness within the organization
- Use of outside counsel
- Evidence of a positive feedback loop
  - Complaints → Investigation → Oversight → Discipline → Incorporation into Plan → Training & Policies/Procedures
Culture of Compliance, cont’d

- Are there minutes from Compliance Committee meetings?
  - Do the minutes reflect participation and accountability on the part of the leadership team, not just the Compliance Officer?
- Is the compliance education of good quality?
  - Is there a 3rd party provider (Navex, Lawroom, etc)? Are there reliable attendance reports?
  - Is there a record of employee attestation to the Code of Conduct?

  Positive feedback loop is key: Is there specific evidence of tracking and trending incidents? Are there process improvement initiatives and work plan items that correlate to these trends?

Red Flags – “Is it on fire?”

- Active investigations
  - Lawsuit/Subpoena/CID
  - Potential or likely whistleblowers?
- Head in the sand mentality?
  - Audit results or other information putting company on notice
  - Zero (or very few) reports to the hotline
  - Zero recorded HIPAA incidents/breaches
  - Issues in review of physician/referral source arrangements
  - External Surveys/Audits (RACs/DPICs)
  - Issues from diligence audit results

  What about a lack of effective compliance program?

Recommendations

Pre-Closing
- Deeper auditing
- Rep/Warranty Insurance
- Disclosures?
  - SRDP
  - OIG
  - Other
- Walk away?

Post-Closing
- New Documents
- New Procedures
- More Training
- Auditing Program
- Culture of Compliance

What impact does the 60 Day Rule have on diligence recommendations?
Overpayments & the 60 Day Rule

- What is the rule?
- What is the look back period?
- What is the diligence standard?
- When does the clock start ticking?
- What does it mean to “identify”?
- What are the options for managing?

Integration Issues

- How will you harmonize the policies, procedures, and cultures of the two organizations?
  - Compare key policies and procedures and target high risk differences to tackle first
- Ensure readiness for surveys/inspections that will be triggered by the change of ownership
- Good lines of communication across integration teams—compliance, legal, credentialing—to make sure nothing falls through the cracks.

Integration Issues, cont’d

- Understand the delineation of responsibilities at the acquired company between compliance, legal, QA, audit, and risk management.
- Make it a priority for the Compliance team to “meet and greet,” so newly onboarded employees know where to go with questions and concerns.
At the end of the day, what should a buyer reasonably expect?

As is true with so many things:  
*It depends...*