




Compliance Implications in Due Diligence
 HCCA Atlanta Regional Conference
 January 26, 2018

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Overview of /Regulatory Compliance DD Process

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


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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


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Key Issues in the Compliance Diligence Process

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


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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


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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

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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?

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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/ZPICs)
- Issues from diligence audit results

What about a lack of effective compliance program?

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Recommendations

<p><u>Pre-Closing</u></p> <ul style="list-style-type: none"> ▪ Deeper auditing ▪ Rep/Warranty Insurance ▪ Disclosures? <ul style="list-style-type: none"> ▪ SRDP ▪ OIG ▪ Other ▪ Walk away? 	<p><u>Post-Closing</u></p> <ul style="list-style-type: none"> ▪ New Documents ▪ New Procedures ▪ More Training ▪ Auditing Program ▪ Culture of Compliance
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What impact does the 60 Day Rule have on diligence recommendations?

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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...

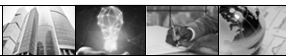
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What should a buyer expect, cont'd

- Who is the buyer?
- Where is the seller in the company's life cycle?
- Does business model involve novel or aggressive strategies?
- What is the buyer's exit strategy?
- What is the buyer's risk tolerance?

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