



PRIVATE EQUITY DILIGENCE ALERT

X-Ray the Radiology Practice Before You Buy It

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The popularity of radiology practice consolidation is increasing, in part, due to the same catalysts that have driven other outsourced physician groups to consolidate - (a) the need to achieve scale and leverage in order to manage rising costs, (b) technology and (c) regulatory compliance. Strategic and financial buyers alike are particularly interested in the synergy made possible by teleradiology, which aims to improve efficiency, cut costs and deliver effective patient care.

Major deals in this space in 2017 include the following: Mednax (NYSE: MD) acquired Radiology Alliance, Envision Healthcare (NYSE: EVHC) acquired Imaging Advantage, and New Enterprise Associates funneled \$200 million into Radiology Partners.

Radiology practice acquisitions - like all healthcare deals - are subject to regulatory issues that can become deal busters or leave buyers vulnerable to post-closing liabilities. Buyers should strongly consider engaging legal counsel and other advisors who are experienced with the nuances and regulations specific to this space, including but not limited to the issues below.

#1 INTERVENTIONAL RADIOLOGISTS

Where are interventional radiologists performing their services and do their financial relationships comport with federal fraud and abuse laws? While most diagnostic radiologists are not viewed as "referral sources" because the order for imaging is driven by another physician, interventional radiologists are treating physicians and referral sources to hospitals, imaging centers and other facilities. Although interventional radiologists are in the minority of radiologists overall, they are often overlooked from a compliance standpoint.

#2 ONSITE SUPERVISION

Is the technical portion of the imaging services, particularly when done with contrast, adequately supervised onsite? Several imaging providers have gotten into trouble for failing to have appropriate onsite supervision for the contrast studies performed in their imaging facilities. For example, in July 2016, Preferred Imaging, LLC, [settled with the government for \\$3.5 million](#) to resolve allegations that Preferred Imaging submitted claims to government programs that were not performed with a qualified supervising physician onsite.

#3 TELERADIOLOGY

Are radiologists who utilize teleradiology platforms appropriately licensed, enrolled and billing for their services? This is particularly important when the physician is located in a different state than the state where the patient receives the technical portion of the imaging services. The enrollment and billing rules, in particular for Medicare, for physicians performing radiology services via teleradiology are nuanced and onerous - each physician location (even if it is their home) must be enrolled under the practice's Medicare enrollment. Billing a physician sitting in one location (i.e., Hawaii) under a different location (e.g., hospital in Florida) can create an overpayment scenario. In addition, it is important to evaluate the applicability of the Medicare anti-markup rule; and if applicable to any of the practice arrangements, whether the billing entity has been billing in accordance with that rule.

#4 EXCLUDED/DISCIPLINED PROVIDERS

Have any of the physicians, mid-levels or other providers been excluded from Medicare or Medicaid or disciplined. It is important to check this issue early in the transaction in case there are potential lead-time issues to address. Buyers also should confirm that none of the administrative or back office personnel have been excluded or otherwise sanctioned by federal healthcare programs.

ABOUT BASS, BERRY & SIMS' HEALTHCARE PRIVATE EQUITY PRACTICE

Our results-oriented, business-minded deal attorneys work seamlessly with our nationally ranked healthcare regulatory attorneys to help private equity clients and their portfolio companies achieve their strategic goals. Clients rely on our deep understanding of healthcare law and our significant experience navigating the unique regulatory and business environment of the healthcare industry.

We regularly assist private equity firms and their healthcare portfolio companies in structuring, negotiating and executing acquisitions and financings and in dispositions of healthcare investments through sales, recapitalizations and public offerings. Private equity firms utilize our comprehensive due diligence of healthcare targets to help uncover and assess key issues and regulatory and compliance risks associated with an investment and rely on the sophisticated guidance of our healthcare regulatory and compliance and investigations counsel.

We advise investors, portfolio companies and management teams in the following:

- ✦ Acquisitions and exits including:
 - ▶ Platform and add-on acquisitions
 - ▶ Due diligence and risk analysis
 - ▶ Leveraged dividends and recapitalizations
 - ▶ Leveraged buyouts
 - ▶ Going private transactions
 - ▶ Sponsor-sponsor transactions
 - ▶ Initial public offerings and exit transaction services and preparation
 - ▶ Management team representation and executive compensation matters
- ✦ Healthcare regulatory and operations
- ✦ Healthcare compliance and investigations
- ✦ Financing including minority interest transactions and mezzanine and senior financings

To learn more about our team and experience, [click here](#).

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