

Spring Cleaning: Healthcare Private Equity Compliance Checklist

IMPORTANT QUESTIONS FOR EVERY HEALTHCARE PRIVATE EQUITY FIRM

Spring cleaning season has arrived! This time of year serves as the perfect opportunity to revisit your portfolio company's healthcare compliance. The complex and ever-changing healthcare regulatory and enforcement environment, including increased focus on the role of private equity firms in their portfolio companies, make compliance a top priority for private equity firms investing in healthcare companies. The best

way to limit your exposure as a private equity firm is to avoid a compliance misstep in the first place. Additionally, an effective and robust compliance program for your portfolio healthcare company makes it much more attractive to potential buyers and helps you avoid an unexpected and costly investigation or valuation hit down the road. **Use this spring checklist to assess whether your portfolio company's "house" is in order.**

Confirm the portfolio company's compliance programs are established and up to industry standards.

- | | YES | NO | | YES | NO |
|--|-----------------------|-----------------------|--|-----------------------|-----------------------|
| 1. Is there an appropriate "tone at the top" and compliance culture? | <input type="radio"/> | <input type="radio"/> | 4. Is there a robust internal audit process that assesses and addresses risk areas on a regular basis? Has there been a recent audit of coding or other areas of high compliance sensitivity (including HIPAA)? | <input type="radio"/> | <input type="radio"/> |
| 2. Are the organizational leadership and board adequately informed and knowledgeable of the key regulatory risks impacting the portfolio company, including mandatory compliance training on an annual basis?
<i>Lack of knowledge of the law and compliance risks is not a defense in a government investigation.</i> | <input type="radio"/> | <input type="radio"/> | 5. Is the portfolio company following obligations to report and refund overpayments, Stark violations or similar obligations relating to federal healthcare programs? <i>Don't wait for a potential buyer to discover this (or other compliance issues) in due diligence.</i> | <input type="radio"/> | <input type="radio"/> |
| 3. Are up-to-date policies and procedures in place, clearly identifiable, and being followed? Do these policies and procedures address the appropriate risk areas for the particular healthcare company? | <input type="radio"/> | <input type="radio"/> | | | |

Identify the private equity firm's role and risk profile in the portfolio company's overall organizational structure.

- | | YES | NO | | YES | NO |
|---|-----------------------|-----------------------|--|-----------------------|-----------------------|
| 1. What roles are your managers or operating partners filling in the portfolio company? Consider potential exposure that may be created for the private equity firm as a result of operating partners playing dual roles as strategic advisors, directors and/or officers of the portfolio company given their affiliation with the private equity firm. | <input type="radio"/> | <input type="radio"/> | 3. Are you directly facilitating or implementing new business programs at the portfolio company that involve revenue growth from federal healthcare program business? Seek regulatory guidance on the front end before implementing new programs that potentially implicate federal and state laws. | <input type="radio"/> | <input type="radio"/> |
| 2. How involved are you in the hiring of executives for the portfolio company and directly overseeing these executive officers? Consider the perception of setting performance metrics or expectations based on growing federal healthcare program business. | <input type="radio"/> | <input type="radio"/> | 4. Do you have appropriate company and fund level insurance programs ? | <input type="radio"/> | <input type="radio"/> |

Ensure that attorney-client privilege protects both the private equity firm as well as the portfolio company.

- | | YES | NO | | YES | NO |
|---|-----------------------|-----------------------|--|-----------------------|-----------------------|
| 1. When legal counsel is engaged, who is named in the engagement letter as the actual client? Should the engagement of outside counsel cover both the private equity firm and the portfolio company? | <input type="radio"/> | <input type="radio"/> | 3. Is outside counsel being included in all communications between management and the board, including in board meetings, on sensitive issues in order to preserve the attorney-client privilege? | <input type="radio"/> | <input type="radio"/> |
| 2. If the portfolio company has separate counsel and receives advice that needs to be shared with the private equity firm, are appropriate measures taken to avoid a possible waiver of the attorney-client privilege? | <input type="radio"/> | <input type="radio"/> | | | |

Keeping up with the ever-changing tangle of complex regulations is tough, and having a robust compliance program to protect your firm and your portfolio has never been more important.

With over 180 attorneys in its nationally recognized healthcare industry practice, Bass, Berry & Sims represents clients in more than 30 healthcare industry sectors. We regularly assist private equity firms and healthcare portfolio companies in finding creative and pragmatic, business-oriented solutions while navigating the unique healthcare regulatory, M&A and business environment.



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