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Pros & Cons of Behavioral Health Sector Investing

Investing in the behavioral health industry presents both opportunities and challenges for private equity investors.

One benefit to investors are the statutory and regulatory changes over the last 10 years — including The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and the Affordable Care Act — that increased the number of beneficiaries enrolled in health plans that provide mental health and substance use disorder (MH & SUD) benefits, thereby creating the potential for higher reimbursement rates. Conversely, the MH & SUD market remains highly regulated, at times with substantial barriers to entry. Continue reading to learn more about the pros and cons of investing in the behavioral health sector.

Regulatory Opportunities Driving Potential Success in Behavioral Health

Pro #1: Increased Access to Benefits

Recent statutory and regulatory changes require health plans to offer increased access to MH & SUD benefits. For example, as of 2016, the MHPAEA requires managed care organizations, alternative benefit plans, and the Children's Health Insurance Program to provide access to MH & SUD benefits at parity with the level at which they provide medical/surgical benefits. Similarly, the U.S. Department of Health and Human Services' 2013 **final rule regarding essential health benefits** requires MH & SUD services to be covered as one of 10 essential health benefits categories in non-grandfathered individual and small group plans.

Pro #2: Medicaid Funding Can Cover IMD Facilities

Regulatory changes have increased the manner by which MD & SUD services may be provided. Whereas states traditionally were prohibited from using federal Medicaid funding to provide MH & SUD services to beneficiaries aged 21-64 in residential treatment facilities with more than 16 beds, new flexibility to the Medicaid Institutions for Mental Diseases (IMD) exclusion allows states to use federal Medicaid funds to cover services in certain IMD facilities between 2019 and 2023. Note: The length of the coverage per beneficiary is 30 days over a 12-month period (whether consecutive or not). The services payable with federal funds include outpatient, inpatient and residential services. To be able to receive these federal payments, states are required to maintain the same level of state funding that they have been providing in other areas of care, such as community-based services.

Pro #3: Significant Coverage Expansion for Substance Abuse Disorders

The **SUPPORT for Patients and Communities Act**, a bipartisan law enacted in 2018 as a response to the national opioid crisis, eliminated location restriction and authorized Medicare coverage for telehealth services furnished to beneficiaries with SUD, expanded Medicaid coverage for telehealth services involving SUD treatment, and also expanded Medicare coverage to include additional opioid treatment programs and services. While further regulatory action is necessary in order to implement some of these changes, the behavioral health sector should feel the impact of additional coverage by government programs, which likely will lead to expanded commercial payor coverage as well.

While all of the developments mentioned above expand behavioral healthcare services to a wider pool of patients, the MH & SUD market can be difficult and costly to enter. Below are some other challenges to consider.

Regulatory and Other Barriers in Behavioral Health

Con #1: Certificate of Need Requirements

Laws in approximately 29 states currently prohibit the establishment and/or acquisition of psychiatric facilities, addiction treatment centers or pain clinics without obtaining a certificate of need (CON) from the state's health services development agency or CON commission. These laws require applicants to prove need based on state guidelines and often lead to higher costs and opposition from competitors.

Con #2: Medicare Coverage Limitations

Medicare effectively limits the ability of Medicare beneficiaries to access specialized psychiatric care by limiting the number of days a beneficiary may receive covered treatment in an inpatient psychiatric hospital without placing any coverage limitations on the same treatment in a general acute care hospital (190 days over the course of the beneficiary's lifetime).

Con #3: Provider Shortages

One of the most significant barriers to adequate psychiatric care is the shortage of psychiatrists, psychiatric nurse practitioners and other providers trained in behavioral healthcare. The use of telepsychiatry can remedy the provider shortage in part, but Medicare and commercial payors have not yet embraced the concept sufficiently.

The legislative and regulatory activity mentioned above has expanded access to mental healthcare to government and commercial patients, which has created opportunities for behavioral health providers and an interesting investment opportunity for private equity. While there are still some limitations on how care is provided and reimbursed, the behavioral healthcare industry has potential for significant growth as it continues to trend toward increased reimbursement for services provided to an expanding patient base.

About Our Healthcare Private Equity Practice

Although there are issues to consider when investing in any physician practice, an investment in certain specialties such as behavioral health present unique regulatory risks. With over 200 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.

To learn more about our team, industry experience and value-add, **click here**.

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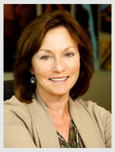

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