

## POST-ACUTE AND LONG-TERM CARE ISSUES IN HEALTH CARE MERGERS & ACQUISITIONS: THREE SHORT-TERM FIXES TO AVOID LONG-TERM ISSUES

*Mergers and acquisitions in the highly regulated health care industry present unique challenges. Parties may falter if a health care transaction is not reviewed, negotiated and completed carefully with respect to the distinct concerns that health care presents. This article identifies three examples of key considerations unique to the post-acute care space.*

Licensure and regulatory concerns must be addressed during a health care merger and acquisition with an eye towards minimizing revenue stream disruptions. There are nuances in post-acute care transactions that, if addressed appropriately, increase the likelihood a deal closes on time while minimizing disruptions to post-closing revenue streams:

- 1. Address Open Survey Cycles as a Condition to Closing.** With the amount of work involved in transferring the assets and operations (including IT systems, licenses, etc.) of a post-acute care facility, the Buyer and Seller have a shared goal of establishing a targeted closing date and closing the transaction on time. But an open survey cycle for a life safety code violation has the potential to derail the transaction's established timeline. Sometimes the parties disagree on whether a particular survey cycle is (or should be) material enough to delay a closing. Parties should address this scenario in the definitive documents as a condition to closing. For example, the parties may agree that a tag of a severity of F or greater or a tag for substandard quality of care is sufficient to delay closing unless adequately resolved to the Buyer's satisfaction, but anything less severe is not a proper justification to delay. Establishing clear expectations in the definitive agreements ensures everyone is on the same page as they work towards closing.
- 2. Address Post-Closing Cash Management Stemming from Assignment of the Provider Number.** Post-closing cash flow in post-acute care transactions includes a wrinkle not found in rollups of physician groups. Most post-acute care transactions involve a Change of Ownership ("CHOW"), with the Seller assigning its Medicare Provider Number and provider agreement to the Buyer. The CHOW is not processed (and the bank account information is not changed) until several months after closing. Accordingly, the Centers for Medicare & Medicaid Services will continue to deposit funds into the Seller's bank account for months following the closing (until the CHOW is processed). The definitive agreement should address the process of ensuring each party receives its respective A/R and the corresponding risks to each party until the CHOW is processed.
- 3. Timely Filings Are Critical, so Sweat the Small Stuff.** Licensure and regulatory approvals are typically, but not always, obtained either upon the closing of the transaction or shortly after closing occurs. The Buyer will need to ensure appropriate steps have been taken to allow for continued operation of the provider or supplier. Timely filing of Medicare and Medicaid applications, licensure applications, certificates of need reviews or exemptions, and other required notices is critical to avoiding a gap in reimbursement or compliance. While the majority of the approvals are obtained after the transaction occurs, it is highly recommended that the bulk of the work related to the notices and applications be completed prior to closing. Once closing occurs, cooperation between the parties may wane or individuals with institutional knowledge may not be retained. It is imperative to fully understand the entire operation of the provider/supplier based on the due diligence and to address each of those aspects of the operations in the transition process. There are also issues that only affect certain post-acute care providers, such as hospice providers or durable medical equipment suppliers, that must be understood and appreciated in the transaction processing. These may include issues related to inventory levels at the time of the transaction, staffing continuity and the timing of patient certifications or recertifications. Careful attention to this post-closing agenda should help avoid unwanted delays or gaps in reimbursement.

Hall Render's Post-Acute & Long-Term Care team has experience handling the licensure, regulatory and credentialing components of various transaction types in numerous states around the country. For more information on Hall Render's Post-Acute & Long-Term Care team and services, click [here](#).

If you have any questions or would like additional information, please contact:

- **Zach Jacob** at (317) 977-1416 or [zjacob@hallrender.com](mailto:zjacob@hallrender.com);

- Todd Selby at (317) 977-1440 or [tselby@hallrender.com](mailto:tselby@hallrender.com);
- Brian Jent at (317) 977-1402 or [bjent@hallrender.com](mailto:bjent@hallrender.com);
- Sean Fahey at (317) 977-1472 or [sfahey@hallrender.com](mailto:sfahey@hallrender.com);
- Your regular Hall Render attorney.

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Throughout 2020, Hall Render's Mergers & Acquisitions Service Line will be publishing a series of articles identifying important, and often unique, aspects of health care transactions that should not be overlooked. Ranging from Real Estate to Reimbursement, this series is designed to highlight key issues and considerations relating to niche components of health care transactions.

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