

## Compliance Today – May 2020 Compliance priorities in practice acquisitions

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It is early 2020, and the healthcare industry continues to consolidate. While mega-mergers between multibillion-dollar companies make national news, hospitals and health systems across the country are advancing their own strategic interests, often by acquiring independent physician practices. Compliance professionals who know the ins and outs of these transactions—and the compliance touchpoints within them—will be in a better position to contribute to the organization’s integration initiatives as closing day approaches and thereafter.

Acquiring a physician practice is a complicated undertaking. Compliance professionals can contribute meaningfully by helping to identify, evaluate, and manage risk areas, which not only protects the acquiring organization from loss and liability but also can aid in post-closing integration. The goal of this article is to identify ways in which a compliance professional can add value when his or her organization is considering acquiring a physician practice.

### Early planning

Many acquisition transactions move forward at a rapid pace, particularly in the early stages, when the parties desire to capitalize on the excitement and momentum generated by reaching agreement on the essential terms of the transaction, as well as their mutual commitments to proceed. Some advance planning by the buyer’s compliance professional will position the professional to participate meaningfully and effectively in the pre-closing evaluation and post-closing integration phases of the transaction.

### Thinking strategically

Savvy compliance professionals are uniquely positioned to combine their legal and business knowledge to help their executive leaders develop actionable strategies. One way to contribute to strategic planning is to stay up to date on the potential costs and benefits of designating an acquired clinic as provider-based, which is a key consideration when adding a new clinic to a health system. Although a 2015 statute prevents new provider-based departments from billing under the Hospital Outpatient Prospective Payment System,<sup>[1]</sup> there may still be benefits to provider-based status for newly acquired physician practice sites. This is particularly true if the site would be provider-based to a hospital that participates in the 340B drug discount program, because the location could enroll as a child site under the program and thereby gain access to reduced-price outpatient drugs.

Over the past several years, the Centers for Medicare & Medicaid Services (CMS) has attempted to dramatically reduce its payment rate for 340B drugs.<sup>[2]</sup> These efforts were stymied by a December 2018 ruling in which the U.S. District Court for the District of Columbia found that CMS lacked the authority to cut its 340B payment rates.<sup>[3]</sup> CMS appealed this ruling in July of 2019 and again proposed to implement the cuts in its Outpatient Prospective Payment System rule for 2020. In such a fluid situation, a compliance professional can add value by always being

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in the know on the current status of potential 340B program payments and similar topics and by acting as a bridge between legal counsel, executives, and business leads.

## **Prepare for the future**

Compliance professionals should also consider how their compliance programs must change to keep up with the organization's growth and integration strategy. If your organization is aiming to increase its geographic footprint, how will you communicate with business partners at a new location? How will you positively and effectively influence behavior at a new location? Could you or an employee travel to the new site on a regular basis? Are you comfortable using videoconferencing technology that could help ease the burden of in-person site visits?

You may think additional staff is the best way your compliance program can keep up with organizational growth, and additional full-time equivalent employees may sometimes be the answer. However, with appropriate planning, a compliance professional can turn organizational growth into an opportunity to help existing staff develop new knowledge and skills. For instance, if your organization has decided to bring on new physician offices as freestanding clinics (as opposed to provider-based locations), you could consider whether someone on your staff is knowledgeable about billing under the Medicare Physician Fee Schedule. If your organization plans to grow into a neighboring area, consider whether someone on your staff commutes from there. If so, would that person be able to act as a compliance liaison for newly acquired locations? If he or she is not ready for that role, could you coach them into readiness?

By understanding an organization's growth strategy and planning around it, a compliance professional can show that the compliance program proactively addresses the organization's needs.

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