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# With Private Equity Growth, CCOs May Face New Pressures, Lawyers Say

By Nina Youngstrom

Compliance officers may find the expectations of their private equity investors at odds at times with their roles and with the guidance for effective compliance programs from the Department of Justice (DOJ) and the New York State Office of Medicaid Inspector General (OMIG), a former federal prosecutor said.

"Under this particular model, it's even tougher to be effective as a compliance officer because there are a number of pressures being placed on the organization and on your role," said David R. Hoffman, a law professor at the Kline School of Law at Drexel University in Philadelphia, at the Health Care Compliance Association's Compliance Institute April 26.

For example, DOJ's Evaluation of Corporate Compliance Programs states that "The critical factors in evaluating any program are whether the program is adequately designed for maximum effectiveness in preventing and detecting wrongdoing by employees and whether corporate management is enforcing the program or is tacitly encouraging or permitting employees to engage in misconduct."[1]

Hoffman thinks that's a challenge for compliance programs with private equity involvement. "The enormous pressure placed on health care organizations to maximize reimbursement from health benefit payers can lead to noncompliant conduct at various levels within the health care provider," he said. "In turn, the effectiveness of the ethics and compliance program will be compromised."

## 'Private Equity Is So Invisible'

And OMIG, which requires providers to have compliance programs, says, among other things, they should be "designed to be compatible with the provider's characteristics."[2] Hoffman noted that "compliance programs are not one-size-fits-all. They have to be tailored to your entity's business needs and the characteristics associated with pressures imposed through private equity ownership pose a significant challenge."

Compliance officers should be thinking about the "special risks" of private equity because "the wave of private equity acquisitions is so large you will be working for these people or have relationships as a joint venture partner," former federal prosecutor Jim Sheehan, chief of the Charities Bureau in the New York State Office of the Attorney General, said at the conference. For example, what will be the impact on billing, coding and revenue cycle management (including charity care policies of nonprofits)? "The problem is private equity is so invisible" in terms of its mechanics, he said. It has been hard for enforcers and regulators to get their arms around it. But private equity firms and their portfolio companies are facing more False Claims Act (FCA) lawsuits, and Hoffman believes private equity investors in nursing homes will start to be held accountable through private lawsuits if they breach their fiduciary duty to residents.

Sheehan explained that private equity operates differently than "super conglomerates" buying small businesses. Private equity investors focus on the technology, management and capital needs of the organization, they're paid

a 2% management fee on all the money under their control and take 20% of the gains realized, and have a five-to-seven-year exit strategy. "Historically, antitrust enforcement focused on very large organizations," he said, such as hospital mergers over a certain threshold, "so private equity firms identify businesses under the threshold." They purchase a number of smaller entities, and after capturing the market, private equity firms control the prices and the practices, Sheehan said. Private equity targets include physician practices, home stool testing, remote cardiac testing, orthopedic and sports medicine, pediatric behavioral health and urology practices.