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The importance of due diligence in healthcare

By Hailey Marsh, CPC, and Jean Acevedo, LHRM, CPC, CHC, CENTC, AAPC Fellow

Hailey Marsh (hmarsh@acevedoconsulting.com) is an Associate Consultant and **Jean Acevedo** (jacevedo@acevedoconsulting.com) is the President and CEO at Acevedo Consulting Inc. in Delray Beach, FL.

- linkedin.com/in/haileymarsh
- linkedin.com/in/jean-acevedo-a5944532

Due diligence is defined by the *Merriam-Webster* dictionary as "research and analysis of a company or organization done in preparation for a business transaction."[1] In reality, due diligence is so much more complex than just that definition, especially when it comes to the healthcare setting. Healthcare is unique in that there are multiple different risk areas, which many who are not familiar with the business side of healthcare would not know about. And, with the increasing number of private equity firms investing in varied healthcare sectors, we see the results of this navetéwith increasing frequency. Due to these factors, due diligence in healthcare requires additional areas to be analyzed in addition to the ordinary legal, corporate, and financial due diligence analyzation. Some of the most important areas specific to healthcare are discussed below.

Compliance

A good healthcare due diligence review should look at whether a company has been in compliance with all applicable laws. The healthcare industry is highly complex and has numerous laws and regulations that are to be abided by to stay in compliance. The main few are the Anti-Kickback Statute, Stark Law, and healthcare fraud and abuse.

The **Anti-Kickback Statute**[2] prohibits the exchange of anything of value to induce or reward the referral of business reimbursable by federal health care programs. An example of this would be a physician accepting a free meal from a drug rep. Although that may seem like a simple kind gesture, that act is considered a kickback when offered to a physician with the authority to provide referrals.

The **Physician Self-Referral Law**,[3] more commonly known as the Stark Law, prohibits physicians from referring patients to receive designated health services payable by Medicare or Medicaid from entities with which the physician or an immediate family member has a financial relationship, unless an exception applies. An example of this would be Dr. A referring all of his patients needing an extremity MRI to Dr. B, a radiologist who happens to be his cousin.

Healthcare fraud and abuse[4] is described as any deliberate and dishonest intent and/or act committed with the knowledge that it could result in an unauthorized benefit to the person committing the act or someone else who is not entitled to the benefit. A common example of this would be a physician office billing for services not performed by the physician.

Due diligence should look at all of these areas to ensure that the seller has taken the steps to fully educate their staff on the laws listed above and has written policies in place to ensure education takes place yearly. The buyer then needs to do a little digging to ensure that the seller has never entered into any agreements and/or contracts that violate any of those laws/regulations.