

GRADUATE MEDICAL EDUCATION IN HEALTH CARE M&A: FOUR THINGS YOU NEED TO KNOW

Mergers and acquisitions in the health care industry present unique challenges that are not often present when undertaking transactions in other industries. Because of health care's highly regulated nature, parties may falter if a health care transaction is not reviewed and negotiated carefully with respect to all of the components of health care regulation.

Teaching hospitals present a unique set of challenges and opportunities in health care transactions. A transaction involving a teaching hospital has the potential to positively impact significant post-transaction revenue, provided that the factors needed for teaching hospital reimbursement are maintained. This article outlines the advantage that teaching hospitals enjoy in the fraud and abuse context, and describes select hospital graduate medical education ("GME") funding issues that can arise in the context of a transaction.

- 1. The Stark Law's Academic Medical Centers Exception.** The academic medical centers ("AMC") exception protects a broad array of relationships between teaching hospitals and faculty physicians. While most Stark Law exceptions only cover discrete financial relationships between a hospital (or other DHS entity) and a physician or physician group, the AMC exception protects all financial relationships and all referrals to a teaching hospital for services that are made by the *bona fide* employed physicians of a component of an AMC. Compliance with the AMC exception requires, among other things, that a majority of the teaching hospital's medical staff physicians are *bona fide* faculty members, and that a majority of the teaching hospital's inpatient admissions are made by physicians who are faculty members. A buyer should consider how different deal structures could impact the likelihood that the teaching hospital and the other components of the AMC may continue to benefit from the AMC exception, provided the exception can continue to be met. For instance, if the transaction results in the realignment of the teaching hospital's medical staff physicians to dilute the number of faculty members below 50%, it is possible that the AMC exception will be unavailable and other compliance strategies would need to be considered.
- 2. Transaction Structure Can Affect GME Payments.** Teaching hospitals are eligible for significant add-on payments from Medicare in the form of direct and indirect graduate medical education reimbursement. Payments vary year-to-year based on numerous factors, some variable and some effectively fixed (e.g., a hospital's resident full-time equivalent ("FTE cap(s)"). These factors are tied directly to a teaching hospital's Medicare provider agreement. In some situations, it may make sense for a buyer to terminate a hospital's existing Medicare provider agreement and either re-enroll the hospital or fold its operations into another existing hospital. However, terminating a teaching hospital's provider agreement may interrupt future GME reimbursement because items that contribute to GME payments, including the per-resident amount ("PRA") and FTE caps, are tied directly to the teaching hospital's Medicare provider agreement. By terminating the provider agreement, the buyer may permanently lose fundamental components of the teaching hospital's GME reimbursement, which may not be able to be recreated. So, in the GME setting, it may be necessary to continue the teaching hospital's Medicare provider agreement or to merge it with and into another Medicare provider, where both the past liabilities and important GME characteristics continue.
- 3. Inheriting Academic Affiliations.** A teaching hospital is only eligible for GME payments for programs that are accredited primarily by the American Council for Graduate Medical Education (certain other professional bodies can also provide accreditation). Often these accreditations are held not by the hospital, but by a medical school or other GME entity with which the hospital has affiliated for the purpose of promoting GME. Where the accreditation is held by a third party, the viability of a teaching hospital's residency programs depends on the strength of the ongoing relationship between the hospital and that third party. Buyers should ensure that they understand which relationships exist and consider assigning appropriate personnel to make contact with individuals involved in maintaining those relationships, both within the teaching hospital and with third parties, such as medical schools, even as the transaction closes.
- 4. New Resident Training Programs.** In the due diligence process, a buyer should investigate whether the target is in the process of establishing a resident training program for the first time. When a non-teaching hospital begins training residents, the hospital can

trigger the establishment of both its PRA and its FTE cap, each of which has a direct impact on the amount of Medicare GME funding that the hospital is eligible to receive. Crucially, a hospital can trigger the establishment of these factors without fully intending to do so, potentially leading to a PRA amount of zero (if no direct GME costs in the PRA base year), a small FTE cap, and little opportunity to secure GME payments. For all hospital acquisitions, buyers should consider asking questions to determine if any resident has ever rotated to the hospital, since even incidental rotations can trigger Medicare determinations. If a hospital is in the process of establishing its FTE cap, a buyer should consider post-closing strategies that reinforce FTE cap building, to increase the potential GME reimbursement in the future.

Teaching hospitals enjoy a number of benefits that are not available to other types of providers, making them potentially attractive additions to expanding hospital systems. However, without appropriate planning, a buyer could lose out on many of these benefits, including Medicare GME funding, sometimes without any realistic means of recovery. For more information on Hall Render's Academic Medicine and GME services click [here](#).

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

- [Scott Geboy](#) at (414) 721-0451 or sgeboy@hallrender.com;
- [Victoire Iradukunda](#) at (317) 429-3658 or viradukunda@hallrender.com;
- [James Junger](#) at (414) 721-0922 or jjunger@hallrender.com;
- [Colleen Powers](#) at (317) 977-1471 or cpowers@hallrender.com; or
- Your regular Hall Render attorney.

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.

- Part 1: **Real Estate Issues in Health Care M&A**
- Part 2: **Information Technology in Health Care M&A**
- Part 3: **COVID-19 in Health Care M&A**
- Part 4: **Post-Acute and Long Term Care Issues in Health Care M&A**
- Part 5: **The Organized Medical Staff in Health Care M&A**
- Part 6: **Graduate Medical Education in Health Care M&A**
- Part 7: **Antitrust in Health Care M&A**
- Part 8: **Litigation in Health Care M&A**
- Part 9: **Labor & Employment in Health Care M&A**