

5 considerations for businesses to consider when planning their next healthcare transaction – both the buy side and the sell side.

1. **Clearly define the purpose of the transaction.** For example, is the goal to expand into a new geographic area or service line, to dispose of an underperforming asset, to obtain needed capital from a sale, or to prevent a competitor from purchasing an adjacent property? There may be other reasons unique to a facility or community; however, clearly defining the purpose in advance will help boards maintain their path throughout lengthy negotiations.
2. **Identify “must haves” and dealbreakers.** Some terms are essential to make the deal worthwhile for an organization, while other terms only make the deal more attractive. Examples include a minimum purchase price for a seller, certain indemnification provisions, specific components of the real property, a specific number of licensed beds or closing by a specific date. Similarly, it is important to think about the things that would make the board walk away from a deal. These might be significant, as examples, Medicare or Medicaid liability, a requirement to assume or pay off debt, or a minimum purchase price for a buyer.
3. **Evaluate notice and consent requirements.** Depending on the type of facility, there may be several overlapping notice and consent requirements triggered by a potential transaction. Examples include regulatory notices arising from licenses or payor programs, lender requirements, employee and resident notices, and public announcements. Understanding the notice and consent requirements is critical because they may dictate the timing and structure of a potential transaction.
4. **Consider the potential financing source and corresponding timing.** With challenging financial markets, buyers are having a harder time accessing capital, which has led to the decline in the number of deals moving forward. In addition, lenders are requiring buyers to put more cash into transactions to have some “skin in the game.” Boards need to consider what cash will be available for any potential acquisition and the related impact of using such cash on existing financial covenants.
5. **Identify external consultants and specialists.** Assembling a team of professionals with prior healthcare M&A experience (healthcare is highly regulated with a lot of potential pitfalls) is critical to efficiently and effectively meeting board objectives. If considering a transaction for the first time, it may be helpful to connect with another community to obtain recommendations for lawyers, bankers or brokers they have used. Regardless of the individuals selected, interview them to ensure they have experience with healthcare transactions and, specifically, the type of transaction the board is pursuing.

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